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Research References

West's Key Number Digest

West's Key Number Digest, Public Assistance 1 to 4, 19, 23, 24

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West's A.L.R. Digest, Public Assistance 1 to 4, 19, 23, 24

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III. State and Local Programs

A. In General; Administration

§ 62. Generally

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West's Key Number Digest

West's Key Number Digest, Public Assistance 1 to 4

In providing for the poor, a state is exercising a governmental function, and in accomplishing its purpose, it may impose the duty either on the state itself or on local governmental units.[1] A county's obligation to support indigents and poor people results only from a statutory provision imposing such a legal obligation.[2]

Footnotes

1 Jennings v. Davidson County, 208 Tenn. 134, 344 S.W.2d 359 (1961).
A state may impose a mandatory duty on a county to administer a public assistance program. Boehm v. Superior Court, 178 Cal. App. 3d 494, 223 Cal. Rptr. 716 (5th Dist. 1986) (abrogated on other grounds by, Saldana v. Globe-Weis Systems Co., 233 Cal. App. 3d 1505, 285 Cal. Rptr. 385 (5th Dist. 1991)).

2 Lander County v. Board of Trustees of Elko General Hospital, 81 Nev. 354, 403 P.2d 659 (1965).
A statute allowing a county to adopt a general assistance standard of aid does not affect the county's duty under the Welfare and Institutions Code to provide health care to indigent residents. Hunt v. Superior Court, 21 Cal. 4th 984, 90 Cal. Rptr. 2d 236, 987 P.2d 705 (1999).

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III. State and Local Programs

A. In General; Administration

§ 63. Administering general assistance relief

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 19

A state department or agency authorized to administer social services has only those powers conferred upon it by law and may not validly act in excess of such powers.[1] In administering general assistance relief, a county acts as an agent of the state.[2] Although a county has broad discretion to determine eligibility for, the type and amount of, and conditions to be attached to indigent relief, this discretion may only be exercised within the boundaries set by the state statutes.[3]

A statute providing that designated state agencies shall act to reduce the rate of social services expenditure so that it matches the available funds if state and county appropriations are insufficient does not grant express authority to a county to sue a Department of Human Services to compel a reduction of state-wide expenditures.[4]

Footnotes

1 Aktar v. Anderson, 58 Cal. App. 4th 1166, 68 Cal. Rptr. 2d 595 (2d Dist. 1997), as supplemented on denial of reh'g, (Nov. 26, 1997).

2 Mooney v. Pickett, 4 Cal. 3d 669, 94 Cal. Rptr. 279, 483 P.2d 1231 (1971).
A county, in making expenditures for social services and acting in its capacity as the county board of social services, was acting as a subordinate state agency in relation to the State Department of Human Services. Romer v. Board of County Com'rs of County of Pueblo, Colo., 956 P.2d 566 (Colo. 1998), as modified on denial of reh'g, (Apr. 27, 1998).

3 Arenas v. San Diego County Bd. of Supervisors, 93 Cal. App. 4th 210, 112 Cal. Rptr. 2d 845 (4th Dist. 2001), as modified on denial of reh'g, (Nov. 13, 2001).

4 Romer v. Board of County Com'rs of County of Pueblo, Colo., 956 P.2d 566 (Colo. 1998), as modified on denial of reh'g, (Apr. 27, 1998).

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III. State and Local Programs

A. In General; Administration

§ 64. Rules and regulations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 24

A state agency or department charged with administering a social welfare program has the power to adopt rules and regulations which give effect to legislative mandates.[1] Such regulations generally are accorded all rational presumptions in favor of the validity of the administrative action and are not declared void by the courts unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate.[2] A state department's interpretation of its own regulations is entitled to judicial deference unless it is plainly erroneous, inconsistent with regulations, or contrary to the enabling statute.[3] Regulations promulgated pursuant to a social welfare program must comply with the requirements of the authorizing statute, and if they do not, such regulations are void and unenforceable.[4]

A legislature did not unconstitutionally delegate authority to county departments to make rules as to standards for good cause for failure to work under a state program, so as to violate the separation of powers doctrine of the state constitution, where there were sufficient practical standards to which the administrative body was to conform, and the legislature established a procedure whereby county departments' discretion could be reviewed effectively by way of an administrative review process and through the court system.[5]

CUMULATIVE SUPPLEMENT

Cases:

Regulations of Department of Public Welfare (DPW) governing eligibility for federal and state reimbursement of county expenditures for child-welfare provider services constituted legislative rules subject to formal notice-and-comment and

regulatory-review procedures. 45 P.S. §§ 1102–1602; 45 Pa.C.S.A. §§ 501–907. Northwestern Youth Services, Inc. v. Com., Dept. of Public Welfare, 66 A.3d 301 (Pa. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Fischer v. State Dept. of Social and Rehabilitation Services, 271 Kan. 167, 21 P.3d 509 (2001); Haverhill Mun. Hosp. v. Commissioner of Div. of Medical Assistance, 45 Mass. App. Ct. 386, 699 N.E.2d 1 (1998).
County and state commissioners of social services were obligated to follow duly adopted rules and regulations of the Department of Social Services, which had the force and effect of law. Babcock v. Rose, 169 Misc. 2d 162, 643 N.Y.S.2d 903 (Sup 1996).

2 Haverhill Mun. Hosp. v. Commissioner of Div. of Medical Assistance, 45 Mass. App. Ct. 386, 699 N.E.2d 1 (1998).
County standards that fail to carry out objectives of the provision of the Welfare and Institutions Code requiring each county to adopt standards of aid and care for the indigent and dependent poor are void, and no protestations that they are merely an exercise of administrative discretion can sanctify them, and the courts, which have the final responsibility for the interpretation of the law, must strike them down. Hunt v. Superior Court, 21 Cal. 4th 984, 90 Cal. Rptr. 2d 236, 987 P.2d 705 (1999).
City Department of Social Services' determination of a petition for services, resting as it does on its interpretation of its own regulations and the legislation under which it functions, is entitled to judicial deference. Schlossberg v. Wing, 277 A.D.2d 41, 715 N.Y.S.2d 44 (1st Dep't 2000).

3 Suburban Manor/Highland Hall Care Center v. Com., Dept. of Public Welfare, 545 Pa. 159, 680 A.2d 867 (1996).

4 Foytik v. Chandler, 88 Haw. 307, 966 P.2d 619 (1998), as amended, (Oct. 23, 1998).
There is no statutory requirement that an applicant seeking services from the Department of Human Services, Division of Developmental Disabilities, develop substantial functional limitations in three major life areas before age 22, and, thus, the regulatory imposition of such requirement exceeds the power of the Division. T.H. v. Division of Developmental Disabilities, 189 N.J. 478, 916 A.2d 1025 (2007).

5 Mankins v. Paxton, 142 Ohio App. 3d 1, 753 N.E.2d 918 (10th Dist. Franklin County 2001).

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III. State and Local Programs

A. In General; Administration

§ 65. Disclosure of information; access to information

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 23

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Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768

A state may have a statute governing the disclosure of information contained in welfare records,[1] the grounds for such statutes being the encouragement of a full and frank disclosure by the welfare recipient of his or her situation and the protection of the recipient from the embarrassment likely to result from disclosure of information contained in such records.[2]

It has been held that neither a state statute providing for the furnishing of information as to the addresses and amount of assistance with respect to persons about whom inquiry is made by an adult resident of the state, the provisions of a State "Right to Know Act," the common law of a state, the First Amendment to the United States Constitution, nor a provision of the state constitution protecting the freedom of the press gives to a newspaper and/or certain of its employees the right to obtain the names and addresses of, and amounts received by, public assistance recipients.[3]

A statute may allow a state or local agency to request from any person information it determines appropriate and necessary to administer a public assistance program although such statutes do not give carte blanche authority to request all medical records of an applicant; rather, the requested records must relate to the appropriate and necessary administration of the public assistance statutes.[4]

Practice Tip:

An issue arising from statutes requiring the disclosure of information by an applicant for public assistance is whether the information obtained under such a statute may be admitted as evidence over an objection premised on a privilege in a criminal proceeding. When such statutes do not address the issue, the answer may lie in other statutes dealing with the confidentiality of patient health care records and privileged communications between a patient and a health care provider.[5]

Footnotes

1 People v. Bridgeforth, 51 Ill. 2d 52, 281 N.E.2d 617, 54 A.L.R.3d 757 (1972).
As to disclosure of information under the federal welfare statutes, see § 66.

2 People v. Bridgeforth, 51 Ill. 2d 52, 281 N.E.2d 617, 54 A.L.R.3d 757 (1972); In re Mellion's Will, 58 Misc. 2d 441, 295 N.Y.S.2d 822 (Sur. Ct. 1968).

3 McMullan v. Wohlgemuth, 453 Pa. 147, 308 A.2d 888 (1973).

4 State v. Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (Ct. App. 1996).

5 State v. Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (Ct. App. 1996).

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III. State and Local Programs

B. Eligibility for Relief

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Research References

West's Key Number Digest

West's Key Number Digest, Health 469, 470
West's Key Number Digest, Public Assistance 34 to 39, 52 to 60, 100(1) to 100(19), 102, 117 to 124, 181(1) to 182(2), 181(4) to 181(9), 185(1) to 185(11), 189

A.L.R. Library

A.L.R. Index, Poor Persons
West's A.L.R. Digest, Health 469, 470
West's A.L.R. Digest, Public Assistance 34 to 39, 52 to 60, 100(1) to 100(19), 102, 117 to 124, 181(1) to 182(2), 181(4) to 181(9), 185(1) to 185(11), 189

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§ 66. Generally

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West's Key Number Digest

West's Key Number Digest, Public Assistance 34 to 38, 100(1) to 100(19), 181(1) to 182(2), 189

A.L.R. Library

Right to unemployment compensation or social security benefits of teacher or other school employee, 33 A.L.R.5th 643

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 18 (Answer—Defense—By welfare department—Refusal of parent to cooperate with agency)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 33 (Checklist—Drafting a complaint, petition, or declaration for the enforcement of welfare rights after an adverse administrative decision)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 36 (Complaint, petition, or declaration—By indigent against town—For aid as poor person—Property insufficient to disqualify person from eligibility)

It is an applicant's responsibility to establish eligibility for public assistance benefits.[1] Federal regulations and the state policy in some states impose on a household the primary responsibility for providing documentary evidence to support an application for public assistance benefits and to resolve any questionable information on an application made for assistance, services, or food

stamps.[2] A client must cooperate in the process of determining or reviewing eligibility, and a failure to do so is an appropriate ground for a denial of benefits or the closure of a case.[3] Eligibility for public assistance is determined at the time an application for such assistance is made.[4]

If an applicant for medical indigency benefits satisfies the initial burden of proof in establishing a prima facie showing of medical indigency, the burden of proof shifts to the government entity to rebut the applicant's claims, which carries with it a reciprocal duty to make a reasonable inquiry into the grounds for the application.[5]

A state agency's regulations pertaining to eligibility for benefits that are inconsistent with statutory authority are void.[6] An administrative regulation may not limit eligibility for public assistance in derogation of the governing statutes.[7]

State law created a property interest in city residents' receipt of benefits sufficient to warrant due process protection of their demonstration of benefits eligibility, despite officials' contention that some characteristics of the program, including the residents' applicant status and the program's dependence on federal funds, rendered the residents' receipt of benefits too uncertain as all factors considered by the state in assessing individual eligibility were objective and, as such, were ones over which program administrators had no discretionary control.[8]

Footnotes

1 Bird v. Pennsylvania Dept. of Public Welfare, 731 A.2d 660 (Pa. Commw. Ct. 1999).
An applicant bears the burden of showing eligibility. Lavine v. Milne, 424 U.S. 577, 96 S. Ct. 1010, 47 L. Ed. 2d 249 (1976).

2 Mosby v. State through Office of Secretary, Dept. of Social Services, 672 So. 2d 246 (La. Ct. App. 2d Cir. 1996).

3 Mosby v. State through Office of Secretary, Dept. of Social Services, 672 So. 2d 246 (La. Ct. App. 2d Cir. 1996).
Substantial evidence supported the determination of a city Human Resources Administration to discontinue a petitioner's public assistance benefits after she failed to return a required eligibility questionnaire. Gonzalez v. State, Office of Temporary and Disability Assistance, 89 A.D.3d 547, 932 N.Y.S.2d 487 (1st Dep't 2011).

4 Pack v. Osborn, 117 Ohio St. 3d 14, 2008-Ohio-90, 881 N.E.2d 237 (2008).

5 Mercy Medical Center v. Ada County, Bd. of County Commissioners of Ada County, 146 Idaho 226, 192 P.3d 1050 (2008).

6 Smith v. Commissioner of Transitional Assistance, 431 Mass. 638, 729 N.E.2d 627 (2000).
As to state rules and regulations for welfare programs, generally, see § 64.

7 Department of Labor and Industries v. Gongyin, 154 Wash. 2d 38, 109 P.3d 816 (2005).

8 Kapps v. Wing, 404 F.3d 105 (2d Cir. 2005).

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B. Eligibility for Relief

§ 67. Residency requirements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Health 469, 470
West's Key Number Digest, Public Assistance 35, 100(2), 181(2)

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 50 (Affidavit—Residence of welfare applicant or recipient)

In the absence of a showing that provisions of a state statute which prohibits public assistance benefits to residents of the state or district who have not resided within their jurisdictions for at least one year immediately preceding their applications for such assistance are necessary to promote compelling governmental interests, such prohibitions are invalid as an impingement on the applicant's constitutional right to travel freely.[1] A state statute limiting new residents of the state, for 12 months, to the Temporary Assistance to Needy Families (TANF) benefits they would have received in the state of their prior residence is unconstitutional as violating the 14th Amendment right to travel as the state's legitimate interest in saving money provided no justification for discrimination among equally eligible citizens, neither the duration of the recipients' state residence nor the identity of their prior states of residence had any relevance to their need for benefits, and those factors did not bear any relationship to the state's interest in making an equitable allocation of funds to be distributed among its needy citizens.[2] Further, a provision of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which authorized any state receiving a block grant under the TANF program to apply durational residency requirements for the receipt of TANF benefits by new residents,[3] did not resuscitate the constitutionality of a state law imposing durational residency requirements in violation of the 14th Amendment right to travel.[4]

Likewise, state statutes that deny welfare benefits to resident aliens, or to aliens not meeting a requirement of durational residence within the United States, violate the Equal Protection Clause of the 14th Amendment and encroach upon the exclusive federal power over the entrance and residence of aliens.[5] Insofar as state welfare policy is concerned, there is little, if any, basis for treating persons who are citizens of another state differently from persons who are citizens of another country.[6] Certain provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which deal with aliens and make aliens who are permanently residing in the United States under color of law (PRUCOLs) ineligible for both federal and state Medicaid, authorize states to provide Medicaid to PRUCOLs, and indeed even to illegal aliens, by enacting a new law, after the Federal Act's effective date, which affirmatively provides for such relief.[7] However, a state statute which discriminated on the basis of alien status by terminating state Medicaid benefits for otherwise eligible nonqualified aliens, including lawfully admitted permanent residents, and aliens permanently residing in the United States under color of law, did not further a compelling interest by the least restrictive means available, and thus violated equal protection guarantees of the Federal Constitution and the applicable state constitution.[8]

A county exceeded its statutory authority by imposing certain durational residency requirements for primary health care benefits under its general assistance program as the general assistance statutes obligated the county to provide a minimum level of care to all eligible persons, whether or not they were residents of the county.[9]

Footnotes

1 Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).
The unconstitutional one-year residence requirements of state welfare laws, both for general relief and categorical assistance, have been held severable from the remaining portions of such statutes so as to permit continued assistance by the state to local governmental bodies for temporary assistance furnished under the statutes. State ex rel. Milwaukee County v. Schmidt, 50 Wis. 2d 303, 184 N.W.2d 183 (1971).
As to other constitutional issues, see § 3.

2 Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).
As to TANF program, generally, see §§ 8 to 10.

3 42 U.S.C.A. § 604(c).
As to PRWORA, generally, see §§ 8 to 10.

4 Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

5 Mathews v. Diaz, 426 U.S. 67, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976); Graham v. Richardson, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971).

6 Mathews v. Diaz, 426 U.S. 67, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976).

7 Aliessa ex rel. Fayad v. Novello, 96 N.Y.2d 418, 730 N.Y.S.2d 1, 754 N.E.2d 1085 (2001) (referring to 8 U.S.C.A. § 1621(d)).
As to PRWORA, generally, see §§ 8 to 10.

8 Aliessa ex rel. Fayad v. Novello, 96 N.Y.2d 418, 730 N.Y.S.2d 1, 754 N.E.2d 1085 (2001).

9 Salts v. Lancaster County, 269 Neb. 948, 697 N.W.2d 289 (2005).

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B. Eligibility for Relief

§ 68. Residency requirements—Meaning of "resident"

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Health 469, 470
West's Key Number Digest, Public Assistance 35, 100(2), 181(2)

A "resident," within the meaning of a state statute providing for medical indigency benefits for residents of a state, is someone who comes into the state with the intent to remain, or in other words, a resident must intend to reside in the state either permanently or at least longer than temporarily.[1] A person can be a "resident" of a certain place he or she intends to eventually leave, for purposes of determining whether a person is a "resident" within the meaning of statutes governing medical indigency benefits.[2] The intent element of a statute providing for medical indigency benefits for residents of a state and excluding benefits for a person who comes into the state for temporary purposes requires an intent to remain or an absence of intent to move elsewhere.[3]

For purposes of one assistance statute, to be a resident of the state a person must have (1) been present in the state for at least 30 days and (2) have a present, subjective intent to reside in the state either permanently or at least longer than temporarily.[4] Under such a statute, the concept of residency does not distinguish between citizens and those who have entered this country illegally.[5] Thus, a hospital patient who was an undocumented immigrant from Mexico was a "resident" of a county for the purpose of receiving medical indigency benefits, though the patient could be subject to deportation proceedings and stated that he intended to return to Mexico, where the patient had been in the county for more than 30 days and intended to remain in Idaho longer than temporarily while working to support his wife and children in Mexico.[6]

A developmentally disabled adult who lived in a state for only two weeks a month, pursuant to a divorce decree granting her parents joint legal and residential custody, was eligible for public assistance services as a "resident" of the state, during the time she actually lived in the state, regardless of her subjective intent to remain in the state permanently, or her place of domicile, as a disabled adult could have multiple residences and still be eligible for public assistance services.[7]

Footnotes

1 Eastern Idaho Regional Medical Center v. Ada County Board of County Com'rs, 139 Idaho 882, 88 P.3d 701 (2004).

2 Saint Alphonsus Regional Medical Center, Inc. v. Board of County Com'rs of Ada County, 146 Idaho 51, 190 P.3d 870 (2008).

3 In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).

4 Saint Alphonsus Regional Medical Center, Inc. v. Board of County Com'rs of Ada County, 146 Idaho 51, 190 P.3d 870 (2008).

5 Saint Alphonsus Regional Medical Center, Inc. v. Board of County Com'rs of Ada County, 146 Idaho 51, 190 P.3d 870 (2008).

6 Saint Alphonsus Regional Medical Center, Inc. v. Board of County Com'rs of Ada County, 146 Idaho 51, 190 P.3d 870 (2008).

7 Cathey v. Board of Review, Dept. of Health and Mental Hygiene, 422 Md. 597, 31 A.3d 94 (2011).

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§ 69. Determination of eligibility

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 52 to 60, 117 to 124, 185(1) to 185(11)

The administration of public assistance based on the use of a formula is not inherently arbitrary since there are limited resources to spend on welfare and since to require individual determinations of need would mandate costly fact-finding procedures that would dissipate resources that could be spent on the needy.[1]

An order of a state department of social welfare denying welfare assistance to an applicant is defective where it fails to specify the reasons and identify supporting evidence, as required by federal and state law, for the denial of welfare assistance.[2] A hearing officer is required to make specific and well-articulated findings[3] and must make a decision in accordance with properly enacted regulations.[4] A finding of an intentional program violation terminating an individual's participation in a public assistance program must be supported by substantial evidence of intent and cannot be based upon assumptions made by the commissioner that agency procedures were followed.[5] Where personal care services assessments involve more than medical determinations, a social services agency is entitled to rely upon the views of its personnel even in the face of conflicting medical evidence.[6]

CUMULATIVE SUPPLEMENT

Cases:

In denying application for Medicaid disability benefits, North Carolina Department of Health and Human Services (DHHS) erred to the extent hearing officer made blanket assertion that she was relying on decision in applicant's Social Security case as a whole, as opposed to identifying opinions from specific providers that were obtained during the Social Security hearing and explaining why she was according weight to those opinions. Mills v. North Carolina Department of Health and Human Services, 794 S.E.2d 566 (N.C. Ct. App. 2016).

[END OF SUPPLEMENT]

Footnotes

1 Schweiker v. Gray Panthers, 453 U.S. 34, 101 S. Ct. 2633, 69 L. Ed. 2d 460 (1981).

2 Henderling v. Carleson, 36 Cal. App. 3d 561, 111 Cal. Rptr. 612 (1st Dist. 1974) (disapproved of on other grounds by, Frink v. Prod, 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476 (1982)).

3 Axilrod v. State, Dept. of Children and Family Services, 799 So. 2d 1103 (Fla. 4th DCA 2001).

4 Heffelfinger v. Department of Public Welfare, 789 A.2d 349 (Pa. Commw. Ct. 2001).

5 Hazelton v. Commissioner of Dept. of Human Services for State, 612 N.W.2d 468 (Minn. Ct. App. 2000).

6 Egan v. DeBuono, 259 A.D.2d 414, 688 N.Y.S.2d 18 (1st Dep't 1999).

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B. Eligibility for Relief

§ 70. Income; resources

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 37(1) to 37(5), 100(14) to 100(19), 181(4) to 181(9)

A.L.R. Library

Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 A.L.R.4th 215

Eligibility for welfare benefits as affected by claimant's status as trust beneficiary, 21 A.L.R.4th 729

Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets, 19 A.L.R.4th 146

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 51 (Affidavit—Of guardian of minor's estate—Real property of estate not includable in determining eligibility for welfare assistance)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 59 (Complaint, petition, or declaration—Allegation—Action by welfare board against recipient of welfare aid—Acquisition of property by recipient)

Welfare regulations reflect a basic social policy that welfare recipients must use their own available income and resources before shifting the burden for their support to the public.[1] An applicant or assistance recipient, or a fiduciary acting on his or her behalf, has an obligation to pursue and use resources which could be made available prior to receiving any further governmental assistance.[2] An applicant may be under a statutory duty to report the acquisition of property which decreases the applicant's need for relief.[3] To correctly determine an individual's financial need for the purposes of welfare eligibility, a state must properly evaluate an individual's resources and income, but it may only consider available resources, and it must reasonably evaluate each resource held.[4]

A patient's potential income may properly be considered and imputed as a "resource" when determining if the patient is medically indigent, within the meaning of statutes defining "medically indigent" as someone in need of hospitalization and who does not have income or other resources sufficient to pay for necessary medical services, and requiring a county to reimburse a health care provider for the cost of medical services provided to a medically indigent patient.[5]

Items that have been found to constitute income or an available resource within the meaning of a public assistance program include a settlement check which a welfare recipient received from a personal injury claim,[6] a lump sum insurance settlement,[7] the garnished portion of an old age pension applicant's Social Security income,[8] and unemployment benefits.[9] However, a right of survivorship in an asset in which an applicant has no present beneficial interest may not be counted in assessing the applicant's available resources.[10]

Because a support trust allows a beneficiary to compel distributions of income, principal, or both, for expenses necessary for the beneficiary's support, an agency may consider the support trust as an available asset when evaluating eligibility for assistance.[11] However, because the beneficiary of a discretionary trust does not have the ability to compel distributions from the trust, only those distributions of income, principal, or both, actually made by the trustee may be considered by the agency as available assets when evaluating eligibility for assistance.[12]

The "transfer" of property rights such as will render a person ineligible for public assistance under statutory provisions to that effect does not include the waiver of a surviving spouse's right to take against her husband's will.[13] Likewise, a statute denying benefits to a claimant who has transferred property without receiving fair and valuable consideration applies only to transfers produced, or at least acquiesced in, by the claimant and does not apply where a transfer results from the independent acts of third persons.[14] An applicant was ineligible for nursing home care assistance due to transfers of real estate and savings accounts to a son for less than adequate consideration, even though the transfers were made by the son, while purportedly acting as attorney-in-fact for the mother where there was substantial evidence that the mother failed to rebut the presumption of ineligibility by satisfying an exception that a person can reasonably be expected to be discharged from an institution and to return to resident property.[15]

Footnotes

1 Johnson v. Wing, 12 F. Supp. 2d 311 (S.D. N.Y. 1998), aff'd, 178 F.3d 611 (2d Cir. 1999); Opp v. Ward County Social Services Bd., 2002 ND 45, 640 N.W.2d 704 (N.D. 2002).

2 Pomroy v. Department of Public Welfare, 750 A.2d 395 (Pa. Commw. Ct. 2000).
A child's assets may be reached by her siblings and other family members residing in the same household if necessary to prevent or reduce their reliance on welfare benefits. Williams v. Raiford, 976 F.2d 942 (5th Cir. 1992).

3 People v. Joseph, 237 Mich. App. 18, 601 N.W.2d 882 (1999).

4 Golis v. Rubin, 857 F. Supp. 1407 (D. Haw. 1994).

Eligibility for public assistance is determined by measuring the countable income and resources of an individual or family against the state's defined standard of need which is its view of the amount necessary to provide for the essential needs of a hypothetical family having the same composition as the family in question, and a person becomes eligible for public assistance when his or her income is below the standard of need. Childs v. Bane, 194 A.D.2d 221, 605 N.Y.S.2d 488 (3d Dep't 1993).

5 St. Luke's Magic Valley Regional Medical Center, Ltd. v. Board of County Com'rs of Gooding County, 149 Idaho 584, 237 P.3d 1210 (2010).

6 People v. Joseph, 237 Mich. App. 18, 601 N.W.2d 882 (1999).

7 Yatarola v. Dowling, 239 A.D.2d 804, 657 N.Y.S.2d 843 (3d Dep't 1997).

8 Ramseyer v. Colorado Dept. of Social Services, 895 P.2d 1188 (Colo. App. 1995).

9 Magwood v. Glass, 240 A.D.2d 409, 658 N.Y.S.2d 401 (2d Dep't 1997).

10 Kolodziejczyk v. Wing, 261 A.D.2d 927, 689 N.Y.S.2d 825 (4th Dep't 1999).

11 Eckes v. Richland County Social Services, 2001 ND 16, 621 N.W.2d 851 (N.D. 2001).

12 Eckes v. Richland County Social Services, 2001 ND 16, 621 N.W.2d 851 (N.D. 2001).

13 Bradley v. Hill, 457 S.W.2d 212 (Mo. Ct. App. 1970).

14 Lee v. State Dept. of Public Health and Welfare, 480 S.W.2d 305 (Mo. Ct. App. 1972).

15 Williamson v. Department of Public Welfare, 166 Pa. Commw. 79, 646 A.2d 38 (1994).

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79 Am. Jur. 2d Welfare § 71

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III. State and Local Programs

B. Eligibility for Relief

§ 71. Employability; persons on strike

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 39, 102

A.L.R. Library

Eligibility of strikers to obtain public assistance, 57 A.L.R.3d 1303

Under state general assistance statutes requiring counties to support the poor, county general assistance cannot be denied on the grounds of employability[1] although a county may establish a work program for recipients and work may be required of a recipient.[2] Traditionally, however, an able-bodied person who can, if the person chooses, obtain employment which will enable the person to maintain him- or herself and his or her family, but refuses to accept that employment, is not entitled to public relief although relief may properly be extended to the spouse and children of such persons.[3] It has been recognized that in periods of high unemployment many residents who are mentally and physically employable find themselves in fact unable to obtain employment, and the "employable single man rule" may deny many such persons the means to obtain essential food, clothing, housing, and medical care.[4]

The fact that a person voluntarily left his or her former employment does not necessarily disqualify the person for relief.[5] However, some welfare statutes provide that a person who applies for benefits within 75 days after the voluntary cessation of employment is deemed to have quit for the purpose of qualifying for benefits.[6]

Employable persons on strike against their employer have been held eligible for public assistance payments, where they meet other requirements,[7] and state public relief statutes have further been held to preclude any reduction by welfare officials in the amount of payments made to such striking workers, with reference to the amount paid to other welfare recipients.[8] The argument that a person on strike, simply because the person is on strike, "refuses" to accept employment, and is therefore ineligible to receive welfare benefits, has been rejected.[9] Moreover, the payment of welfare benefits to needy strikers may not be regarded as the equivalent of state subsidizing of the strike.[10] Further, the contention, grounded upon the doctrine of pre-emption, that granting public assistance to strikers constitutes an unconstitutional interference with the system of free collective bargaining prescribed by the federal government, lacks substance.[11]

Footnotes

1 Mooney v. Pickett, 4 Cal. 3d 669, 94 Cal. Rptr. 279, 483 P.2d 1231 (1971); Clark County Social Service Dept. v. Newkirk, 106 Nev. 177, 789 P.2d 227 (1990).

2 Mooney v. Pickett, 4 Cal. 3d 669, 94 Cal. Rptr. 279, 483 P.2d 1231 (1971).

3 State ex rel. Gilpin v. Smith, 339 Mo. 194, 96 S.W.2d 40 (1936); Jennings v. City of St. Louis, 332 Mo. 173, 58 S.W.2d 979, 87 A.L.R. 365 (1933).

4 Mooney v. Pickett, 4 Cal. 3d 669, 94 Cal. Rptr. 279, 483 P.2d 1231 (1971).

5 State ex rel. Arteaga v. Silverman, 56 Wis. 2d 110, 201 N.W.2d 538 (1972).

6 Lavine v. Milne, 424 U.S. 577, 96 S. Ct. 1010, 47 L. Ed. 2d 249 (1976) (New York statute).

7 Strat-O-Seal Mfg. Co. v. Scott, 72 Ill. App. 2d 480, 218 N.E.2d 227 (4th Dist. 1966).
Where the state law gives a welfare board no right to discriminate against applicants for relief upon grounds related to the source of their unemployment and the cause or reason for welfare needs, state welfare department rulings discriminating against strikers and their families were discriminatory and illegal. State ex rel. International Union of Mine, Mill and Smelterworkers v. Montana State Dept. of Public Welfare, 136 Mont. 283, 347 P.2d 727 (1959).
A county welfare commissioner should not have been enjoined from denying public assistance benefits to strikers under the state social services law where the plaintiff strikers' allegations were insufficient to confer jurisdiction in a federal court. Russo v. Kirby, 453 F.2d 548 (2d Cir. 1971).

8 State ex rel. International Union of Mine, Mill and Smelterworkers v. Montana State Dept. of Public Welfare, 136 Mont. 283, 347 P.2d 727 (1959).

9 Lascaris v. Wyman, 31 N.Y.2d 386, 340 N.Y.S.2d 397, 292 N.E.2d 667, 57 A.L.R.3d 1295 (1972).
Strikers are not persons who have without good cause refused a bona fide offer of employment. ITT Lamp Division of International Tel. & Tel. Corp. v. Minter, 435 F.2d 989 (1st Cir. 1970).

10 Lascaris v. Wyman, 31 N.Y.2d 386, 340 N.Y.S.2d 397, 292 N.E.2d 667, 57 A.L.R.3d 1295 (1972).

11 Lascaris v. Wyman, 31 N.Y.2d 386, 340 N.Y.S.2d 397, 292 N.E.2d 667, 57 A.L.R.3d 1295 (1972).

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III. State and Local Programs

B. Eligibility for Relief

§ 72. Determination of disability

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 185(1) to 185(11)

A.L.R. Library

Alcoholic as entitled to public assistance under poor laws, 43 A.L.R.3d 554

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 23 (Answer—Defense—By welfare department—Denial of disability benefits on basis of refusal to submit to medical treatment)

The determination that a person is ineligible for general assistance benefits for disability is reviewed for errors of law and for substantial evidence.[1] Where a hearing officer misapplies regulatory or statutory criteria in determining whether a person is disabled within the meaning of a public assistance statute, the hearing officer errs as a matter of law.[2]

Regulations of a state department of social welfare requiring a medical examination as a condition of eligibility for receiving aid to the disabled have been held enforceable.[3]

CUMULATIVE SUPPLEMENT

Cases:

Regulation governing the receipt of developmental disability services incorporates the standard error of measurement (SEM) when interpreting test results to determine if a person meets the IQ threshold of 70 needed to demonstrate eligibility for services. In re R.R., 2019 VT 31, 210 A.3d 1246 (Vt. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Koepke v. Senior and Disabled Services Div., 168 Or. App. 338, 7 P.3d 553 (2000).

2 Koepke v. Senior and Disabled Services Div., 168 Or. App. 338, 7 P.3d 553 (2000).

3 Powers v. State Dept. of Social Welfare, 208 Kan. 605, 493 P.2d 590 (1972).

79 Am. Jur. 2d Welfare III C Refs.

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III. State and Local Programs

C. Settlement of Poor Persons

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Research References

West's Key Number Digest

West's Key Number Digest, Public Assistance 210 to 219

A.L.R. Library

A.L.R. Index, Poor Persons
West's A.L.R. Digest, Public Assistance 210 to 219

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79 Am. Jur. 2d Welfare § 73

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C. Settlement of Poor Persons

§ 73. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 210 to 219

Legal settlement is a concept used exclusively in the context of public care of indigents and other persons and attempts to assess expenses and responsibilities to the county[1] or town[2] which received the benefits of an individual's residence prior to the need for assistance.[3] Although a town is responsible for providing benefits to the indigent whether or not the person or persons are residents of the town, a town is ultimately liable only for the support of those paupers having a settlement in that town.[4]

Footnotes

1 State ex rel. Palmer v. Cass County, 522 N.W.2d 615 (Iowa 1994).

2 In re John M., 122 N.H. 1120, 454 A.2d 887 (1982).

3 State ex rel. Palmer v. Cass County, 522 N.W.2d 615 (Iowa 1994).

4 In re Eva S., 121 N.H. 847, 435 A.2d 838 (1981).
As to liability of governmental body for relief furnished by other governmental body, see § 86.

79 Am. Jur. 2d Welfare § 74

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III. State and Local Programs

C. Settlement of Poor Persons

§ 74. Establishment; change

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 210 to 219

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 50 (Affidavit—Residence of welfare applicant of recipient)

A finding of legal settlement in a county requires more than a mere physical presence in the county.[1] "Legal settlement," in the context of the public care of indigents and other persons, is not synonymous with residence or domicile and is acquired by a person's presence in a fixed and permanent abode and an intention to remain there.[2] A person has "removed" to another state, for purposes of determining legal settlement if such person has changed his or her domicile.[3]

Footnotes

1 State ex rel. Palmer v. Cass County, 522 N.W.2d 615 (Iowa 1994).

2 State ex rel. Palmer v. Hancock County, 443 N.W.2d 690 (Iowa 1989).

3 State ex rel. Palmer v. Hancock County, 443 N.W.2d 690 (Iowa 1989).

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III. State and Local Programs

C. Settlement of Poor Persons

§ 75. Protection of state from imposition of support of indigent persons; removal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 210 to 219

The Supreme Court has recognized that the old notion that each community should care for its own indigents, and that relief is solely the responsibility of local government, is outdated and that in an industrial society the task of providing assistance to the needy has ceased to be local in character.[1]

Statutes proscribing the bringing or assisting to bring into a state any indigent person who is not a resident of the state, knowing the person to be indigent, even in the case of persons who are presently destitute of property and without resources to obtain the necessities of life, and who have no relatives or friends able and willing to support them, are an unconstitutional barrier to interstate commerce.[2]

States have sometimes provided for a discretionary grant of transportation assistance to a temporary resident when the person's welfare and the interest of the State will be promoted by the removal of the person to another state and the person has an adequate means of support in this new location.[3]

Footnotes

1 Edwards v. People of State of California, 314 U.S. 160, 62 S. Ct. 164, 86 L. Ed. 119 (1941).

2 Edwards v. People of State of California, 314 U.S. 160, 62 S. Ct. 164, 86 L. Ed. 119 (1941).

3 Speed v. Blum, 97 Misc. 2d 163, 410 N.Y.S.2d 970 (Sup 1978).

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79 Am. Jur. 2d Welfare III D Refs.

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D. Manner of Providing Relief

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West's Key Number Digest

West's Key Number Digest, Public Assistance 42, 43

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West's A.L.R. Digest, Public Assistance 42, 43

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D. Manner of Providing Relief

§ 76. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 42, 43

A statutory duty to extend relief to the poor may be performed in any reasonable way and by the use of every reasonable means.[1] The extent and manner of aid provided under a state constitutional provision mandating aid for the needy is left to the discretion of the legislature.[2] Where statutes place on the counties the duty to support resident indigent persons according to standards adopted by their boards of supervisors, in the discharge of such duties, the county supervisors have discretion to determine the type and amount of, and conditions to be attached to, indigent relief and the courts have no authority to interfere in the absence of a clear showing of fraud or arbitrary or capricious conduct.[3]

Footnotes

1 Aven v. Steiner Cancer Hospital, 189 Ga. 126, 5 S.E.2d 356 (1939).
As to statutory basis of duty to support poor persons, see § 2.

2 Mark G. v. Sabol, 247 A.D.2d 15, 677 N.Y.S.2d 292 (1st Dep't 1998), aff'd as modified on other grounds, 93 N.Y.2d 710, 695 N.Y.S.2d 730, 717 N.E.2d 1067 (1999).

3 Berkeley v. Alameda County Bd. of Supervisors, 40 Cal. App. 3d 961, 115 Cal. Rptr. 540 (1st Dist. 1974).

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§ 77. Cash and commodity relief

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 42, 43

A county may satisfy its obligation to support and relieve the indigent by providing in-kind aid such as food and shelter, and may reduce general assistance grant levels by the value of in-kind aid that is actually made available.[1] However, it has been found that a trial court abused its discretion in denying the plaintiffs' motion for a preliminary injunction seeking to enjoin the enforcement of a county's general assistance program which required single, employable residents who were eligible for general assistance benefits to accept food and shelter at a county-run facility in lieu of receiving cash benefits.[2]

Footnotes

1 Hunt v. Superior Court, 21 Cal. 4th 984, 90 Cal. Rptr. 2d 236, 987 P.2d 705 (1999).
As to distribution of food under the Federal Food Stamp Act, see §§ 27 to 31.

2 Robbins v. Superior Court, 38 Cal. 3d 199, 211 Cal. Rptr. 398, 695 P.2d 695 (1985).

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D. Manner of Providing Relief

§ 78. Housing and shelter assistance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 42, 43

Benefits are often provided in the form of housing and shelter assistance, and such benefits may take the form of grants for emergency shelter assistance,[1] temporary rental assistance,[2] and emergency grants to pay rent arrears.[3]

Persons receiving shelter benefits may be required to use a portion of other public assistance benefits received to contribute to the costs of shelter.[4] Such persons may also be required to search for and accept "safe, permanent" housing or be subject to a termination of benefits.[5] Under one program, a county has statutory authority to reduce or eliminate cash shelter benefits under the general assistance program to the extent that recipients receive shelter at a cost below the shelter allocation or willfully refuse to accept shelter made available by the county, whether provided by the county or through the county payments to landlords, but the county cannot reduce the shelter benefit to the homeless by the value of benefits not received and not shown to be available.[6]

Footnotes

1 Clark v. Milwaukee County, 188 Wis. 2d 171, 524 N.W.2d 382 (1994).
Trial court order requiring a township trustee to provide shelter for homeless individuals who have consumed alcohol or who are in need of detoxification and medical treatment for substance abuse problems was authorized by poor relief statute. Center Tp. of Marion County v. Coe, 572 N.E.2d 1350 (Ind. Ct. App. 1991).

2 L.T. v. New Jersey Dept. of Human Services, Div. of Family Development, 134 N.J. 304, 633 A.2d 964 (1993).

3 Kleinman v. Wing, 254 A.D.2d 122, 678 N.Y.S.2d 625 (1st Dep't 1998).

4 Rodriguez v. Wing, 94 N.Y.2d 192, 701 N.Y.S.2d 328, 723 N.E.2d 77 (1999).

5 Massachusetts Coalition for the Homeless v. Secretary of Executive Office of Health and Human Services, 422 Mass. 214, 661 N.E.2d 1276 (1996).

6 Bell v. Board of Supervisors, 23 Cal. App. 4th 1695, 28 Cal. Rptr. 2d 919 (1st Dist. 1994), as modified on denial of reh'g, (May 2, 1994).

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79 Am. Jur. 2d Welfare § 79

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III. State and Local Programs

D. Manner of Providing Relief

§ 79. Work relief

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 42, 43

Eligibility for public assistance is often conditioned on an applicant's or recipient's participation in some form of work relief[1] or job training program.[2] A failure to participate in such programs may lead to sanctions against the individual[3] or the termination of benefits.[4] However, rules promulgated by one state agency were void and unenforceable insofar as they operated to disqualify adults and their children from medical and financial general assistance benefits because of the failure of one adult member of the assistance household to comply with the work requirements.[5] Under one program a recipient of general assistance who performs workfare, that is, uncompensated work for a municipality providing assistance, to maintain eligibility for assistance is entitled to offset the value of that workfare against the obligation to reimburse a municipality for the net general assistance received.[6]

Under one program, high school students are required to be assigned primarily to educational activities, and a student's public assistance benefits cannot be conditioned on participating in a work program.[7]

CUMULATIVE SUPPLEMENT

Cases:

Trial court could not issue a ruling on class certification in action by public assistance recipient against the Commissioner of the New York State Office of Temporary and Disability Assistance (OTDA) and commissioner of a county department of social services in which recipient claimed that defendants improperly refused to credit his work in a county work experience program towards the lien, that the taking of a lien including the amount earned under the Social Services Law violated the federal Fair Labor Standards Act (FLSA), and that the taking of the lien unjustly enriched defendants; although recipient had pled a class action complaint, recipient had not sought a court ruling on class certification. Fair Labor Standards Act of 1938, § 1 et seq.,

29 U.S.C.A. § 201 et seq.; N.Y. CPLR §§ 902, 3001, 5239; N.Y. Social Services Law §§ 106(1), 336(1), 336-c(2)(b). Andersen v. Roberts, 88 N.Y.S.3d 757 (Sup 2018).

Regulation regarding conciliation notice and notice of decision for public assistance recipients' refusal or failure to comply with public assistance employment requirements did not violate statute governing conciliation and refusal to participate, even though regulation omitted that showing of compliance with assessments, employment planning, and assigned work activities was action that public assistance recipient may take to avoid reduction in assistance; statute did not contain requirement that recipients be expressly told that they can avoid sanctions by asserting compliance. McKinney's Social Services Law § 341(1)(a); 18 NYCRR 385.11(a)(2). Puerto v. Doar, 142 A.D.3d 34, 34 N.Y.S.3d 409 (1st Dep't 2016).

[END OF SUPPLEMENT]

Footnotes

1 Coker v. City of Lewiston, 1998 ME 93, 710 A.2d 909 (Me. 1998); Modzelewski v. Com., Dept. of Public Welfare, 109 Pa. Commw. 519, 531 A.2d 585 (1987).

2 Ward v. Smaby, 405 N.W.2d 254 (Minn. Ct. App. 1987); Vicari v. Wing, 244 A.D.2d 974, 665 N.Y.S.2d 209 (4th Dep't 1997).

3 Dozier v. Williams County Social Service Bd., 1999 ND 240, 603 N.W.2d 493 (N.D. 1999).

4 Casid v. Prinzo, 232 A.D.2d 860, 649 N.Y.S.2d 64 (3d Dep't 1996); Modzelewski v. Com., Dept. of Public Welfare, 109 Pa. Commw. 519, 531 A.2d 585 (1987).

5 Jacober v. Sunn, 6 Haw. App. 160, 715 P.2d 813 (1986).

6 Coker v. City of Lewiston, 1998 ME 93, 710 A.2d 909 (Me. 1998).
As to the obligation of welfare recipient to reimburse the political unit providing relief, see § 92.

7 Matthews v. Barrios-Paoli, 178 Misc. 2d 602, 676 N.Y.S.2d 757, 128 Ed. Law Rep. 834 (Sup 1998), rev'd on other grounds, 270 A.D.2d 152, 704 N.Y.S.2d 259 (1st Dep't 2000).

79 Am. Jur. 2d Welfare IV A Refs.

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IV. Support by Private Persons

A. In General

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West's Key Number Digest

West's Key Number Digest, Public Assistance 13

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IV. Support by Private Persons

A. In General

§ 80. Generally; primary duty of relatives

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 13

A.L.R. Library

Postmajority disability as reviving parental duty to support child, 48 A.L.R.4th 919

Forms

Am. Jur. Legal Forms 2d § 264:6 (Agreement between responsible relative and welfare department for support of indigent)
Am. Jur. Legal Forms 2d § 264:7 (Bond of responsible relative for support of indigent)

Historically, the financial burden of supporting needy individuals was placed upon designated relatives, rather than the public, in order to reduce the amount of welfare expenditures.[1] Thus, the common-law obligation to support a wife and minor children was expanded by statute to include adult children, grandchildren, and parents when they would otherwise become public charges.[2] Statutes making relatives of a designated degree liable for the support of another adult have generally survived a variety of attacks, including those on constitutional grounds.[3]

Footnotes

1 Parker v. Stage, 43 N.Y.2d 128, 400 N.Y.S.2d 794, 371 N.E.2d 513, 98 A.L.R.3d 328 (1977).

2 Parker v. Stage, 43 N.Y.2d 128, 400 N.Y.S.2d 794, 371 N.E.2d 513, 98 A.L.R.3d 328 (1977).

3 State v. Griffiths, 152 Conn. 48, 203 A.2d 144 (1964); Mallatt v. Luihn, 206 Or. 678, 294 P.2d 871 (1956); Application of Hansis, 10 Wis. 2d 629, 103 N.W.2d 679 (1960).

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79 Am. Jur. 2d Welfare § 81

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IV. Support by Private Persons

A. In General

§ 81. Husband and wife; parent and child; other specified relatives

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 13

At traditional common law, as between husband and wife, the duty of providing support for the household is on the husband.[1] The law imposes on parents the duty of supporting their minor children,[2] and in the case of children so weak mentally or physically as to be unable to support themselves, the duty of the parent does not cease on the majority of the child.[3] There is no common-law duty of a child to support a needy or indigent parent.[4]

Statutes now generally control the duty of a relative to support an indigent person.[5] Spouses, children, and parents may have a statutory duty to care for and maintain, or financially assist, an indigent relative within the mandates of an applicable statute.[6] In this regard, in many jurisdictions, courts have expanded a husband's liability of support for his wife to apply to both spouses.[7] Also, it has been said that the primary obligation for the support and care of a child is by those who bring the child into the world rather than on the taxpayers of a state, and therefore, parents have a duty to support their children and cannot rid themselves of it by transferring the duty to someone else.[8] Ordinarily, a parent's duty to provide largely disappears when a child attains majority unless the child is still in school, less than 19 years old, and dependent.[9] However, under some statutes, relatives in direct ascending line may remain responsible for life's basic necessities for needy descendants beyond such time provided circumstances permit.[10] Under a statute making it the duty of the father, the mother, and the child or children of any poor person who is unable to maintain him- or herself by work, to maintain such poor person to the extent of his or her ability, a grandparent has no duty to support a needy grandchild.[11] However, a support statute may impose such an obligation on a grandparent.[12]

Definition:

"Indigent," for the purposes of a statute imposing a duty on a class of relatives to support an indigent relative, includes, but is not limited to, those who are completely destitute and helpless, and it also encompasses those persons who have some limited means but whose means are not sufficient to adequately provide for their maintenance and support.[13]

Footnotes

1 Am. Jur. 2d, Husband and Wife § 150.

2 Am. Jur. 2d, Parent and Child § 42.

3 Am. Jur. 2d, Parent and Child § 72.

4 Savoy v. Savoy, 433 Pa. Super. 549, 641 A.2d 596 (1994).

5 Haggard v. Idaho Dept. of Health and Welfare, 98 Idaho 55, 558 P.2d 84 (1977); Savoy v. Savoy, 433 Pa. Super. 549, 641 A.2d 596 (1994).
The family of a public assistance recipient is and unquestionably should be held financially accountable to the boundaries of their ability, for contributing money to offset a county's support or Medicaid payments. Department of Social Services on behalf of Joseph M. v. Barbara M., 123 Misc. 2d 523, 474 N.Y.S.2d 193 (Fam. Ct. 1984).
As to statutory offenses of abandonment or nonsupport of wife and children, see Am. Jur. 2d, Desertion and Nonsupport §§ 1 et seq.

6 Health Care & Retirement Corp. of America v. Pittas, 2012 PA Super 96, 46 A.3d 719 (2012).

7 Am. Jur. 2d, Husband and Wife § 150.

8 Martinez v. Martinez, 98 N.M. 535, 650 P.2d 819 (1982).

9 Sebastien v. McKay, 649 So. 2d 711 (La. Ct. App. 3d Cir. 1994).

10 Sebastien v. McKay, 649 So. 2d 711 (La. Ct. App. 3d Cir. 1994).

11 Haggard v. Idaho Dept. of Health and Welfare, 98 Idaho 55, 558 P.2d 84 (1977).

12 Rhodes v. Rhodes, 305 So. 2d 673 (La. Ct. App. 2d Cir. 1974), writ denied, 309 So. 2d 352 (La. 1975).

13 Savoy v. Savoy, 433 Pa. Super. 549, 641 A.2d 596 (1994).

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IV. Support by Private Persons

A. In General

§ 82. Duty contingent on ability

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 13

The duty to support poor relations is always dependent on ability, both at common law[1] and under applicable statutes.[2] The ability to pay is essential to the effective enforcement of the liability to support indigent relatives.[3]

A nursing home, rather than the nursing home patient's son, had the burden of establishing the son's ability to pay for an indigent patient's nursing home expenses, as required to find the son statutorily liable for such expenses, in the nursing home's filial support action against the son.[4]

Practice Tip:

The question of the ability of a person to pay under a statute imposing a relative to support an indigent relative is one of fact.[5]

Footnotes

1 Condon v. Pomeroy-Grace, 73 Conn. 607, 48 A. 756 (1901).

2 Acevedo v. Rojas, 230 A.D.2d 878, 646 N.Y.S.2d 714 (2d Dep't 1996) (spousal duty); Savoy v. Savoy, 433 Pa. Super. 549, 641 A.2d 596 (1994).

3 In re Stoner's Estate, 358 Pa. 252, 56 A.2d 250 (1948).

4 Health Care & Retirement Corp. of America v. Pittas, 2012 PA Super 96, 46 A.3d 719 (2012).

5 Smith v. Juras, 14 Or. App. 442, 513 P.2d 824 (1973).

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79 Am. Jur. 2d Welfare IV B Refs.

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B. Compelling Support

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Research References

West's Key Number Digest

West's Key Number Digest, Public Assistance 71, 218

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A.L.R. Index, Poor Persons
West's A.L.R. Digest, Public Assistance 71, 218

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§ 83. Generally

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West's Key Number Digest

West's Key Number Digest, Public Assistance 71, 218

The procedure for compelling support of an indigent by one of the indigent's relatives designated by the poor laws is necessarily exclusively statutory.[1] Procedures for enforcement of such duty to support an indigent relative whereby either an action at law may be brought or a warrant may be issued, which eventuates in the creation of a lien upon the relative's property, have been held valid and enforceable where such procedures, and the hearings and determinations attendant thereto, comply with constitutional requirements.[2] A hearing before a welfare commissioner on a welfare department demand that a relative contribute to the cost of maintaining a welfare patient need only not violate the fundamentals of natural justice, and nonjurisdictional defects of a nonprejudicial nature will not render the hearing and decision illegal.[3]

Footnotes

1 Conant v. State, 197 Wash. 21, 84 P.2d 378 (1938).

2 Mallatt v. Luihn, 206 Or. 678, 294 P.2d 871 (1956).

3 Romano v. Connecticut State Welfare Dept., 4 Conn. Cir. Ct. 138, 227 A.2d 270 (App. Div. 1966).

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79 Am. Jur. 2d Welfare § 84

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IV. Support by Private Persons

B. Compelling Support

§ 84. Actions to compel support

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 71, 218

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws §§ 55 to 58, 60 (Pleadings used in actions to compel support)

A statute making persons liable for the support of destitute relatives may provide for the imposition of such liability by an order directing the support of the pauper by such relatives as shall be liable.[1] The statutory duty of a parent to support a dependent adult, contained in a statute providing for a reciprocal duty of support between parent and child, and not providing for an enforcement mechanism, may be enforced through a direct action by the child against the parent.[2] A state statute permitting an indigent to sue certain relatives for support payments, under certain circumstances, has been held to permit such an action by the indigent's legal representative.[3]

In an action under a statute providing for support as a poor person by specified relatives, the plaintiff satisfies the burden of presenting a prima facie case by showing that the defendant is gainfully employed, where employed, and that the defendant is earning money.[4]

In the context of a wrongful death action by the father of a deceased child, it has been held that the legal obligation of a child to support a parent is limited to the conditions prescribed by the statute so requiring and may not be enforced in an action against

a third person.[5] An order that a child pay a parent for obligations previously created by the child is a retroactive order and is not permissible under a relative support statute.[6]

Footnotes

1 Monmouth County Welfare Bd. v. Coward, 86 N.J. Super. 253, 206 A.2d 610 (County Ct. 1964); Savoy v. Savoy, 433 Pa. Super. 549, 641 A.2d 596 (1994).
A public welfare official is authorized to bring a proceeding on behalf of a mother to seek reimbursement of public assistance from a responsible relative. Harmer v. St. Lawrence County Dept. of Social Services, 126 A.D.2d 891, 510 N.Y.S.2d 783 (3d Dep't 1987).

2 Haxton by Haxton v. Haxton, 299 Or. 616, 705 P.2d 721 (1985).

3 Stone v. Brewster, 399 F.2d 554 (D.C. Cir. 1968).

4 Pavlick v. Teresinski, 54 N.J. Super. 478, 149 A.2d 300 (Juv. & Dom. Rel. Ct. 1959).

5 Fussner v. Andert, 261 Minn. 347, 113 N.W.2d 355 (1961).

6 Com. ex rel. Sharpe v. Sharpe, 193 Pa. Super. 161, 163 A.2d 923 (1960).

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§ 85. Apportionment of liability: contribution between relatives

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West's Key Number Digest

West's Key Number Digest, Public Assistance 71, 218

A statute creating a duty upon a class of relatives to support a needy relative may provide for the apportionment of the expense of support among such persons.[1] An order imposing the whole burden of support on a single relative where there are others of equal ability to contribute and of equal kinship and equally amenable to the process of court has been held to be improper.[2]

Footnotes

1 Parker v. Stage, 43 N.Y.2d 128, 400 N.Y.S.2d 794, 371 N.E.2d 513, 98 A.L.R.3d 328 (1977).

2 Application of Hansis, 10 Wis. 2d 629, 103 N.W.2d 679 (1960).

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79 Am. Jur. 2d Welfare V Refs.

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V. Liability of Governmental Body for Relief Furnished by Others

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Research References

West's Key Number Digest

West's Key Number Digest, Public Assistance 12, 50, 71, 131, 191 to 193

A.L.R. Library

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West's A.L.R. Digest, Public Assistance 12, 50, 71, 131, 191 to 193

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§ 86. Generally

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West's Key Number Digest

West's Key Number Digest, Public Assistance 12, 50, 71, 131, 191, 192, 193

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 38 (Complaint, petition, or declaration—By one public entity against another—For recovery of aid furnished to resident)

The question of the liability of a poor district generally arises where relief to a poor person has been furnished either by another district or by an individual and reimbursement is sought by the district or individual furnishing the relief.[1] There is no common-law liability and there are no equities between towns in respect to caring for and supporting paupers, but the whole matter is purely and strictly statutory, and where the statute imposes no liability, there is none.[2]

Under statutes in some states, a county giving aid to a nonresident pauper, a poor or indigent person, or an old or diseased person may recover from the county of that person's residence.[3] Furthermore, by statute, a town or city may be entitled to reimbursement for expenses incurred in extending benefits from the county where the recipients have not established settlement in the city and therefore are county paupers.[4] Likewise, under some state provisions, a county is responsible for the expenses of extending benefits to an indigent when such person has legal settlement in the county, but the State may be responsible for the expenses of extending benefits to an indigent when such person has no legal settlement or when such settlement is unknown.[5] However, there may be no rights of action by a local governmental unit against a state or federal governmental unit to recover expenditures made in connection with general assistance to paupers.[6]

Practice Tip:

The State, where it will suffer a loss through being liable for payment for the care of a mentally retarded adult if the adult's settlement in a county is not established, has the burden of proof on the issue of the adult's legal settlement.[7]

Footnotes

1 Newcomer v. Jefferson Tp., Tipton County, 181 Ind. 1, 103 N.E. 843 (1914); Wood v. Boone County, 153 Iowa 92, 133 N.W. 377 (1911).

2 Aven v. Steiner Cancer Hospital, 189 Ga. 126, 5 S.E.2d 356 (1939); Peabody v. Town of Holland, 107 Vt. 237, 178 A. 888, 98 A.L.R. 866 (1935).

3 Lander County v. Board of Trustees of Elko General Hospital, 81 Nev. 354, 403 P.2d 659 (1965).

4 In re John M., 122 N.H. 1120, 454 A.2d 887 (1982).
As to settlement, generally, see §§ 73 to 75.

5 State ex rel. Palmer v. Cass County, 522 N.W.2d 615 (Iowa 1994).

6 In re Eva S., 121 N.H. 847, 435 A.2d 838 (1981).

7 State ex rel. Palmer v. Hancock County, 443 N.W.2d 690 (Iowa 1989).

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V. Liability of Governmental Body for Relief Furnished by Others

§ 87. Medical and surgical services

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 12, 50, 71, 131, 191, 192, 193

A.L.R. Library

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 A.L.R.5th 390

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 37 (Complaint, petition, or declaration—By hospital against local entity—For payment of services furnished to indigent)

A statute may place the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides.[1] A hospital may therefore seek reimbursement from a county for medical services provided to certified indigents.[2] However, a hospital's failure to make a claim within the applicable statutory time limitation may bar the hospital's claim.[3]

The medical indigency statutes may also provide a system whereby health care providers may apply to a county for financial assistance after supplying medical care to the poor.[4] The purpose of such medical indigency assistance statutes are twofold, to provide indigents with access to medical care and to allow hospitals to obtain compensation for services rendered to indigents.[5]

The ultimate financial responsibility for treatment received at a facility by a certified indigent patient, who is a resident of a state but is not a resident of the county in which the medical facility is located, may be the obligation of the county of which the certified indigent patient is a resident.[6]

CUMULATIVE SUPPLEMENT

Cases:

Medicaid Act did not require Texas Health and Human Services Commission to reimburse Federally Qualified Health Centers (FQHCs) for non-emergency out-of-network services provided to Medicaid patients who belonged to Managed Care Organization (MCO) that no longer had contract with FQHC; Medicaid Act required state to pay FQHC for undefined services provided to patients who could not pay, Act's entire structure contemplated states' use of MCOs as intermediaries along with MCO–FQHC contracts, and Act further required that state-MCO contracts specify whether state or MCO would reimburse healthcare providers for emergency out-of-network services, thus indicating state's responsibility was limited to only such services. Social Security Act §§ 1902, 1903, 42 U.S.C.A. §§ 1396a(bb)(1)-(2), 1396b(m)-(2)(A)(vii). Legacy Community Health Services, Incorporated v. Smith, 881 F.3d 358 (5th Cir. 2018), as revised, (Feb. 1, 2018).

[END OF SUPPLEMENT]

Footnotes

1 Lawrence County v. Decatur General Hosp., 675 So. 2d 393 (Ala. 1996).

2 Lawrence County v. Decatur General Hosp., 675 So. 2d 393 (Ala. 1996).

3 Lawrence County v. Decatur General Hosp., 675 So. 2d 393 (Ala. 1996).

4 University of Utah Hosp. v. Board of Com'rs of Payette County, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996).

5 St. Alphonsus Regional Medical Center, Ltd. v. Twin Falls County, 112 Idaho 309, 732 P.2d 278 (1987).

6 Lawrence County v. Decatur General Hosp., 675 So. 2d 393 (Ala. 1996).

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V. Liability of Governmental Body for Relief Furnished by Others

§ 88. Medical and surgical services—Emergency care

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 12, 50, 71, 131, 191, 192, 193

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 46 (Complaint, petition, or declaration—Allegation—Action against county for emergency aid rendered to indigent—Advance authorization not required)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 49 (Notice of motion—For judgment on the pleadings—Action by physician against county welfare department officials for payment of emergency medical services furnished to indigents)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 53 (Order—For judgment on the pleadings—On motion of physician—Defense of failure to secure advance authorization for emergency medical services invalid)

A county may have an obligation to reimburse a facility that provides emergency medical care to indigents.[1] Though a county may have a duty to provide general relief, a statute may relieve the county of any obligation to pay for health care services unless pursuant to a contract or unless the county has specifically authorized such services and agreed to payment.[2] Thus, a county's refusal to reimburse noncontracting private hospitals for emergency medical care provided to indigents or to contract with more than one hospital for provision of indigent care was not in violation of any statutory or a common law duty.[3] The county was under no obligation to pay for emergency care rendered indigents at a medical care facility other than its own or one with which it had contracted.[4] Even under the 19th century statutory and jurisprudential history that established an unconditional duty on the part of poor districts to pay health care providers for emergency treatment rendered to indigents, it was never the procedure that a health care provider could simply render services and then submit a bill to the overseers of the poor.[5]

A hospital which renders emergency medical care to an indigent person can become a real party in interest and bring an action to recover for such services from the proper authorities.[6]

Footnotes

1 Lawrence County v. Decatur General Hosp., 675 So. 2d 393 (Ala. 1996).

2 Bay General Community Hospital v. County of San Diego, 156 Cal. App. 3d 944, 203 Cal. Rptr. 184 (4th Dist. 1984) (disapproved of on other grounds by, County of San Diego v. State of California, 15 Cal. 4th 68, 61 Cal. Rptr. 2d 134, 931 P.2d 312 (1997)).
Absent a statutory duty, a city has no obligation to reimburse a hospital for emergency medical services rendered to indigents although such an obligation may fall on the state. Temple University-of the Com. System of Higher Educ. v. City of Philadelphia, 698 A.2d 118 (Pa. Commw. Ct. 1997).

3 Bay General Community Hospital v. County of San Diego, 156 Cal. App. 3d 944, 203 Cal. Rptr. 184 (4th Dist. 1984) (disapproved of on other grounds by, County of San Diego v. State of California, 15 Cal. 4th 68, 61 Cal. Rptr. 2d 134, 931 P.2d 312 (1997)).

4 Bay General Community Hospital v. County of San Diego, 156 Cal. App. 3d 944, 203 Cal. Rptr. 184 (4th Dist. 1984) (disapproved of on other grounds by, County of San Diego v. State of California, 15 Cal. 4th 68, 61 Cal. Rptr. 2d 134, 931 P.2d 312 (1997)).

5 Temple University-of the Com. System of Higher Educ. v. City of Philadelphia, 698 A.2d 118 (Pa. Commw. Ct. 1997).

6 Montana Deaconess Hospital v. Lewis and Clark County, 149 Mont. 206, 425 P.2d 316 (1967).

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VI. Recovery of Benefits or Support Provided

A. In General; Recovery from Person Other Than Recipient

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West's Key Number Digest

West's Key Number Digest, Child Support 28
West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

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A. In General; Recovery from Person Other Than Recipient

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West's Key Number Digest

West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

A.L.R. Library

Constitutionality of statutory provision requiring reimbursement of public by child for financial assistance to aged parents, 75 A.L.R.3d 1159

Certain statutes make liable, equally with the person who receives public assistance, any other person who by law is responsible for the support of the individual receiving such assistance.[1] However, in order for a person who is liable for another's support to be liable, the person must be of sufficient ability to pay the amount of support assistance during the period it was rendered.[2] However, at least one statute provides that no relative is legally liable to support or to contribute to the support of any applicant for or recipient of financial aid given under a program for the aged, blind, and disabled or for costs of any medical care, hospital care, or other services rendered to the recipient so long as the applicant or recipient is receiving aid under an aged, blind, and disabled program at the time such medical care or hospital care or other services was rendered.[3]

Footnotes

1 Acevedo v. Rojas, 230 A.D.2d 878, 646 N.Y.S.2d 714 (2d Dep't 1996).

2 McLaren v. McLaren, 99 Misc. 2d 797, 417 N.Y.S.2d 434 (Fam. Ct. 1979).

3 County of Ventura v. Stark, 158 Cal. App. 3d 1112, 205 Cal. Rptr. 139 (2d Dist. 1984).

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A. In General; Recovery from Person Other Than Recipient

§ 90. Support of children

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Child Support 28
West's Key Number Digest, Public Assistance 71, 131, 192, 193, 218

Where the government is supporting a parent's child, the parent has to reimburse the government, subject to the applicable statute of limitations and the parent's ability to pay.[1] In a public assistance reimbursement proceeding, the obligation is limited by the responsible parent's ability to pay as measured according to child support guidelines.[2] However, a custodial mother is not liable for public assistance benefits received by her on behalf of a minor child where the father, as the person responsible for making support payments, is obligated to repay the benefits received.[3] Where a child over age 18 but under age 21, through his or her own actions, places him- or herself beyond parental control, a county department of social services cannot recover child support from the child's parents.[4]

While a state has statutory authority to seek recoupment for its monetary expenditures for the support of its recipients, the proper procedure must be employed to recover such expenditures.[5]

Practice Tip:

An action against a putative father for reimbursement for public assistance payments made for the support of a minor child may be barred by laches.[6]

A lack of evidence of "public assistance money" paid by a Department of Human Services (DHS) "to or for the benefit of" a child for an eight-month period, or the amount of reasonable expenses incurred, including support and maintenance for the child by the DHS, precluded a Child Support Enforcement Agency (CSEA) from recovering money from the father in a paternity and child support action, as the CSEA had argued that child support should be calculated based on the guidelines worksheet used when a custodial parent provides support, but was only entitled to recover money actually expended by the DHS.[7]

A state's failure to comply with a federal court order requiring it to comply with federal guidelines for calculating noncustodial parents' obligation to reimburse the State for payments made to the custodial spouses under the Aid to Families with Dependent Children (AFDC) program did not amount to a taking, and thus, the noncustodial parents were not entitled to interest on funds wrongly withheld where the state debt collection statute that violated the federal regulations was specifically intended to help recover the cost of providing services under the AFDC program.[8]

CUMULATIVE SUPPLEMENT

Cases:

Unwed father was entitled to reimbursement for the overpayment of child support, where amount of the social security disability insurance (SSDI) derivative benefit that mother received on behalf of child fully satisfied father's child support and father also concurrently paid mother through wage withholding, such that mother received a double payment. Rathbone v. Corse, 2015 VT 73, 124 A.3d 476 (Vt. 2015).

[END OF SUPPLEMENT]

Footnotes

1 County of San Diego v. Guy C., 30 Cal. App. 4th 1325, 36 Cal. Rptr. 2d 222 (4th Dist. 1994).
The parent of a recipient of public assistance, if of sufficient ability, is responsible for the support of the recipient and may be required to contribute a fair and reasonable sum for such support. Dutchess County Dept. of Social Services ex rel. Day v. Day, 269 A.D.2d 595, 703 N.Y.S.2d 269 (2d Dep't 2000), aff'd, 96 N.Y.2d 149, 726 N.Y.S.2d 54, 749 N.E.2d 733 (2001).
A father paying child support was responsible for reimbursing the government for the public assistance benefits received by his children's custodians for the children's benefit during their minority. Skan v. State, Dept. of Revenue, Child Support Services Div., 2009 WL 279097 (Alaska 2009).

2 Ver Kuilen v. Ver Kuilen, 578 N.W.2d 790 (Minn. Ct. App. 1998).
The parent's financial resources, including current child support obligations, are pertinent in devising a schedule for the repayment of a public assistance debt, and a trial court may order that such payment commence after the obligation to pay current child support has expired. People ex rel. S.M., 7 P.3d 1021 (Colo. App. 2000), as modified on denial of reh'g, (July 6, 2000).

3 Florida Dept. of Revenue ex rel. Troutman v. Troutman, 805 So. 2d 56 (Fla. 2d DCA 2001).

4 Orange County Dept. of Social Services on Behalf of Clavijo v. Clavijo, 172 Misc. 2d 87, 656 N.Y.S.2d 836 (Fam. Ct. 1997).

5 Dorsett v. Wheeler, 101 Ohio App. 3d 716, 656 N.E.2d 698 (3d Dist. Paulding County 1995).

6 State, Dept. of Health and Rehabilitative Services on Behalf of Sippert v. Tindall, 622 So. 2d 115 (Fla. 4th DCA 1993).

7 Child Support Enforcement Agency v. Doe, 105 Haw. 79, 93 P.3d 1186 (Ct. App. 2004).

8 Skelton v. Henry, 390 F.3d 614 (8th Cir. 2004).

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VI. Recovery of Benefits or Support Provided

A. In General; Recovery from Person Other Than Recipient

§ 91. Support of children—Assignment of support

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Child Support 28
West's Key Number Digest, Public Assistance 71, 131, 192, 193, 218

Generally, a custodial parent assigns his or her rights to past, current, and future child support payments, including arrearages, to the State in exchange for receiving public assistance.[1] Parents cannot unilaterally eliminate the right of the state to collect child support payments from the father as reimbursement for public assistance paid to the mother, even if a court order, which recognizes the parents' satisfaction of a child support judgment, is a judgment as a court is precluded from approving any action between parties which attempts to extinguish a debt owed to the state, which is a judgment creditor for the portion of the child support that the mother assigned to it.[2] However, a state's statutory rights to be reimbursed for the payment of public benefits on behalf of a child from the child's father may be negated by the conduct of the child's legal guardian, and a guardian, who is denied any child support from the father due to her activities in keeping the child away from him, cannot assign rights to the state that she did not have.[3]

Individuals who receive public assistance, thereby assigning to the state any rights they have to support from any other person, are not deemed necessary parties to a support proceeding brought on their behalf by the state although the assignment extends only to support rights in existence while the individual is in receipt of public assistance.[4] In a proceeding initiated by a state to recover assistance paid on behalf of a child, the father should have been ordered to reimburse the state beginning from the date of the child's birth and not from the date of the filing of the state's petition.[5] A state's captioning of a complaint to establish paternity and to recoup public assistance payments as ex rel. the mother, rather than the child, is not fatal to an action, as the title does not preclude the litigation from being for the benefit of the child, and statutes do not require a state to actually the place child's name in the caption.[6]

Footnotes

1 State, Dept. of Family Services v. Peterson, 957 P.2d 1307 (Wyo. 1998).
The application of and/or receipt of public assistance shall act as an automatic and immediate assignment of all rights of support for the applicant and any dependent child. DCSE/Vann v. Rivers, 747 A.2d 128 (Del. Fam. Ct. 1997).

2 Division of Child Support Enforcement v. Shelton, 25 S.W.3d 165 (Mo. Ct. App. W.D. 2000).

3 Stiles v. Department of Public Health and Human Services, 2000 MT 257, 301 Mont. 482, 10 P.3d 819 (2000).

4 Commissioner of Social Services of City of New York ex rel. Sandra J. v. Stephen J., 180 Misc. 2d 598, 691 N.Y.S.2d 869 (Fam. Ct. 1999).

5 State, Dept. of Human Services ex rel. Hammons v. Burge, 503 N.W.2d 413 (Iowa 1993).

6 State ex rel. Johnson v. Niederer, 123 Idaho 282, 846 P.2d 933 (Ct. App. 1992).

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B. Recovery from Recipient or Estate Thereof

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West's Key Number Digest, Health 496(1), 496(2), 497
West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

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West's Key Number Digest, Public Assistance 70, 130, 192, 193, 218

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Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 A.L.R.3d 772
Reimbursement of public for financial assistance to aged persons, 29 A.L.R.2d 731

At common law, a recipient of public assistance was not obliged to repay, and no action could be brought, to recover sums expended for the recipient's care and maintenance.[1] Likewise, at common law, public welfare agencies had no right to recover for the cost of public assistance given to an eligible recipient who was discovered to have property.[2] Accordingly, in the absence of statute, no liability rests upon a recipient of public assistance to reimburse a state or county for aid legitimately obtained and granted.[3]

Footnotes

1 Carpenter ex rel. McAllister v. Saltone Corp., 276 A.D.2d 202, 716 N.Y.S.2d 86 (2d Dep't 2000).
At common law and in absence of special statute, an aged indigent is not legally obligated to reimburse a public agency for relief legitimately furnished to him or her in time of need. Town of Chester v. Drake, 126 Vt. 472, 236 A.2d 664 (1967).

2 Matter of Lainez, 102 Misc. 2d 138, 422 N.Y.S.2d 849 (Sur. Ct. 1979), rev'd on other grounds, 79 A.D.2d 78, 435 N.Y.S.2d 798 (2d Dep't 1981), order aff'd, 55 N.Y.2d 657, 446 N.Y.S.2d 942, 431 N.E.2d 303 (1981).

3 Ogdon v. Workmen's Comp. Appeals Bd., 11 Cal. 3d 192, 113 Cal. Rptr. 206, 520 P.2d 1022 (1974).

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B. Recovery from Recipient or Estate Thereof

§ 93. Recovery under statutes, generally

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West's Key Number Digest, Public Assistance 70, 130, 192, 193, 218

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Reimbursement of public for financial assistance to aged persons, 29 A.L.R.2d 731

Forms

Am. Jur. Legal Forms 2d § 264:13 (Notice and questionnaire to personal representative of deceased welfare recipient—Extent of property owned by recipient prior to death)
Am. Jur. Legal Forms 2d § 264:14 to 264:16 (Claim against estate for welfare assistance)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 67 (Petition or application—Against estate of aid recipient—For order of payment to welfare department of cost of care and maintenance)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 71 (Answer—Defense—Care and services furnished in public institution the result of involuntary commitment—Not reimbursable from estate of recipient)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 72 (Answer—Defense—Action to recover cost of public assistance from estate of recipient barred—Res judicata)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 73 (Answer—Defense—Action by public institution against indigent or estate—Value of services performed by indigent while in public institution as offset to claim)

Statutes have been enacted in some jurisdictions to provide for reimbursement from a recipient of public assistance.[1] Some statutes make any public assistance provided to a decedent a debt due the state or county, as the case may be, from the estate of the decedent.[2] Under one statute, where a recipient of public assistance benefits owns real or personal property at the time of his or her death, the statute permits the county to seek a recovery of benefits paid to the decedent on a theory of implied contract.[3] The extent of the state's recovery will depend on the statutory scheme as certain limitations may apply.[4] The purpose of a provision limiting a state's right to reimbursement for public assistance benefits out of an estate is to encourage public assistance beneficiaries who inherit property from others to seek and accept that property.[5] A state did not have a right to assert a claim against an estate, for the purpose of recovering medical assistance that was paid for the benefit of the decedent's surviving spouse, as the decedent's spouse, who received the aid while in a nursing home, survived the decedent, and the statute provided for reimbursement of benefits paid from the estate of the surviving spouse.[6]

Practice Tip:

A state department of social services, as the claimant against the estate of a Medicaid recipient to recover a sum allegedly expended on the recipient's behalf, has the burden of proof and the estate is not required to adduce evidence to defeat the claim.[7]

The purpose of a recovery statute is to capture and make available for payment of Medicaid-reimbursement claims certain interests in property that are not ordinarily subject to the payment of a decedent's debts.[8] Medicaid benefits provided by a state to a trust beneficiary created a debt due to the state upon the beneficiary's death that was payable from the trust beneficiary's estate.[9]

In one state, a claim against the estate of a surviving spouse for medical assistance provided to the recipient spouse may be made up to the value of the assets of the estate that were marital property or jointly owned property at any time during the marriage.[10]

The estate of the wife of a medical assistance recipient was a "decedent's estate" for purposes of a statute governing the recovery from an estate of a medical assistance recipient, and therefore, a trial court erred in approving an amount greater than $3,000 for funeral expenses in an action by the state seeking to recover medical assistance benefits paid to the decedent's husband as the statute gave the state a preferred claim for medical assistance benefits paid on behalf of the recipient, after payment of funeral expenses not in excess of $3,000.[11]

Under certain emergency aid programs, any assistance provided is required to be repaid within a fixed period of time.[12]

CUMULATIVE SUPPLEMENT

Cases:

Department of Human Services' recovery from sale of decedent's marital home to pay for medical assistance benefits previously received by his deceased wife was limited to 50% of the home's net sale proceeds; home had been held in joint tenancy, and, in statute governing recovery of Medicaid liens, "to the extent of such interest" referred to wife's fractional interest in the joint tenancy property rather than to her undivided interest in the whole property. Social Security Act § 1917, 42 U.S.C.A. § 1396p(b)(4)(B); NDCC § 50-24.1-07. Matter of Estate of Krueger, 2019 ND 42, 923 N.W.2d 475 (N.D. 2019).

[END OF SUPPLEMENT]

Footnotes

1 State v. Marks, 239 Conn. 471, 686 A.2d 969 (1996); In re Bustamante, 256 A.D.2d 463, 682 N.Y.S.2d 102 (2d Dep't 1998).

2 In re Estate of Graham, 59 S.W.3d 15 (Mo. Ct. App. W.D. 2001).

3 In re Bustamante, 256 A.D.2d 463, 682 N.Y.S.2d 102 (2d Dep't 1998).
The phrase "at the time of death," in a statute permitting the recoupment of overpayments made under a Medicaid reimbursement program from a recipient's estate, which included any asset in which the recipient had any legal title or interest at the time of his or her death, meant the time immediately before the recipient's death. In re Barkema Trust, 690 N.W.2d 50 (Iowa 2004).
Implied contract referred to in statute providing that "implied contract" is basis for right of public welfare official to recover from recipient for Medicaid benefits is equitable remedy of contract implied by law rather than contract implied from facts, and thus, equitable considerations are relevant. In re Estate of Bricker, 183 Misc. 2d 149, 702 N.Y.S.2d 535 (Sur. Ct. 1999).

4 State v. Marks, 239 Conn. 471, 686 A.2d 969 (1996).

5 State v. Marks, 239 Conn. 471, 686 A.2d 969 (1996).

6 In re Estate of Elliott, 141 Idaho 177, 108 P.3d 324 (2005) (overruled on other grounds by, City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012)).

7 State, Dept. of Social Services v. Beckner, 813 S.W.2d 353 (Mo. Ct. App. S.D. 1991).

8 In re Estate of Serovy, 711 N.W.2d 290 (Iowa 2006).

9 In re Barkema Trust, 690 N.W.2d 50 (Iowa 2004).

10 In re Estate of Barg, 752 N.W.2d 52 (Minn. 2008).

11 In re Estate of Fisk, 2010 ND 186, 788 N.W.2d 611 (N.D. 2010).

12 Martinez v. Turner, 289 A.D.2d 408, 734 N.Y.S.2d 610 (2d Dep't 2001).

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VI. Recovery of Benefits or Support Provided

B. Recovery from Recipient or Estate Thereof

§ 94. Payments made under fraudulent claims; overpayments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 70, 130, 192, 193, 218

A.L.R. Library

Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 A.L.R.3d 772
Reimbursement of public for financial assistance to aged persons, 29 A.L.R.2d 731

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws §§ 62, 64 (Complaint, petition, or declaration—By welfare department—To recover benefits erroneously paid)
Am. Jur. Pleading and Practice Forms, Welfare Laws §§ 68, 69 (Complaint, petition, or declaration—Allegation—Action against recipient for restitution of aid—Payments obtained by fraud)

A state has a common-law right to recover public assistance benefits that are paid by the department in error.[1] Public assistance statutes often provide for the recovery of assistance incorrectly paid.[2] A state's obligation to recoup overpayments of welfare benefits applies even in the absence of fault on the part of an applicant.[3] A statute may authorize a state department of revenue to set off public assistance overpayments against income tax refunds.[4]

When an individual has wrongfully obtained public assistance, statutes may provide a right of action against the recipient and the recipient's estate for the recovery of such funds.[5] However, where such a statute provides that right of action only against recipients and their estates, the statute does not permit a civil cause of action to recover wrongfully obtained public assistance from persons who aid or abet a recipient to obtain assistance wrongfully.[6] One statute provides that in any civil action for the recovery of assistance on the grounds the assistance was fraudulently obtained, proof that the recipient of the assistance possesses or did possess resources which does or would have rendered the recipient ineligible to receive such assistance is deemed prima facie evidence that such assistance was fraudulently obtained.[7]

Because there is no general or common-law power that can be exercised by an administrative agency, and agencies are creatures of statute and their power is dependent upon authorizing statutes, where statutes do not expressly provide for a common-law fraud action for punitive damages for fraud against the public assistance system, an administrative agency cannot maintain an action for punitive damages while seeking recovery for alleged overpayments of public assistance.[8]

An agency that confers public assistance may bring a cause of action to rescind an inter vivos transfer of real property alleging it was fraudulent as to the agency.[9] To establish a prima facie case that the transfer of property was fraudulent, the agency need only show that the consideration, as shown on the face of the deed, does not approximate the fair, cash market value of the property.[10] However, a vague statement, such as that "good and valuable consideration" was given for the transfer, is insufficient to defeat a prima facie showing of fraud.[11] Once the agency presents evidence that the only quantitative consideration recited on the face of a deed does not approximate the value of the property, the burden of going forward with further evidence concerning the actual consideration paid shifts to the recipient of the property.[12]

Practice Tip:

A state department of social and health service and the prosecutor's office were in privity for purposes of determining whether an administrative hearing on the recoupment of an overpayment of food stamps, financial assistance, and medical assistance had a collateral estoppel effect on a prosecution for welfare fraud as both the prosecutor's office and DSHS represented the state.[13]

A person has an "interest" in a trust to the extent the assets of a trust are actually available to a trust beneficiary as that term is used in a statute permitting the recoupment of overpayments made under a Medicaid reimbursement program from the recipient's estate.[14]

CUMULATIVE SUPPLEMENT

Cases:

Where the Department of Health and Human Resources' notice of overpayment of Supplemental Nutrition Assistance Program (SNAP) benefits does not comply with the notice requirements, the burden is on the Department to establish, by a preponderance of the evidence, that the food stamp recipient was not prejudiced thereby in his or her ability to contest the claim, and where the

trier of fact concludes that the recipient was in fact prejudiced, the overpayment claim shall be dismissed, but where the trier of fact concludes that the recipient was not prejudiced, the overpayment claim may proceed to decision on the merits. Food and Nutrition Act of 2008, § 2, 7 U.S.C.A. § 2011 et seq.; 7 C.F.R. § 273.13(a)(2). Hudson v. Bowling, 752 S.E.2d 313 (W. Va. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Marshall v. State, 559 N.W.2d 612 (Iowa 1997).

2 Marshall v. State, 559 N.W.2d 612 (Iowa 1997); County of Morrison v. Litke, 558 N.W.2d 16 (Minn. Ct. App. 1997).

3 Marshall v. State, 559 N.W.2d 612 (Iowa 1997).

4 Smith-Porter v. Iowa Dept. of Human Services, 590 N.W.2d 541 (Iowa 1999).

5 State ex rel. Secretary of Social and Rehabilitation Services v. Fomby, 11 Kan. App. 2d 138, 715 P.2d 1045 (1986); County of Morrison v. Litke, 558 N.W.2d 16 (Minn. Ct. App. 1997).

6 County of Morrison v. Litke, 558 N.W.2d 16 (Minn. Ct. App. 1997).

7 State ex rel. Secretary of Social and Rehabilitation Services v. Fomby, 11 Kan. App. 2d 138, 715 P.2d 1045 (1986).

8 State ex rel. Secretary of Social and Rehabilitation Services v. Fomby, 11 Kan. App. 2d 138, 715 P.2d 1045 (1986).

9 In re Estate of Huffmon, 265 Ill. App. 3d 225, 202 Ill. Dec. 589, 638 N.E.2d 235 (4th Dist. 1994).

10 In re Estate of Huffmon, 265 Ill. App. 3d 225, 202 Ill. Dec. 589, 638 N.E.2d 235 (4th Dist. 1994).

11 In re Estate of Huffmon, 265 Ill. App. 3d 225, 202 Ill. Dec. 589, 638 N.E.2d 235 (4th Dist. 1994).

12 In re Estate of Huffmon, 265 Ill. App. 3d 225, 202 Ill. Dec. 589, 638 N.E.2d 235 (4th Dist. 1994).

13 State v. Williams, 132 Wash. 2d 248, 937 P.2d 1052 (1997).

14 In re Barkema Trust, 690 N.W.2d 50 (Iowa 2004).

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VI. Recovery of Benefits or Support Provided

B. Recovery from Recipient or Estate Thereof

§ 95. Liens on property of recipient

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West's Key Number Digest

West's Key Number Digest, Public Assistance 70, 130, 192, 193, 218

A.L.R. Library

Reimbursement of public for financial assistance to aged persons, 29 A.L.R.2d 731

Forms

Am. Jur. Legal Forms 2d § 264:11 (Agreement by welfare applicant for reimbursement of benefits provided—With authorization of lien on applicant's property)

Am. Jur. Legal Forms 2d § 264:12 (Agreement by welfare applicant to convey property as reimbursement for assistance granted—With authorization of lien on applicant's property—Joinder of spouse)

Provision is made in some jurisdictions for a lien on property of a recipient of public assistance to secure the repayment of amounts received.[1] The overriding purpose of a provision which authorizes a lien by a social services agency which has provided public assistance against a recipient of such assistance is to facilitate the recoupment of public funds by such agencies.[2]

Footnotes

1 State v. Burnaka, 61 Conn. App. 45, 762 A.2d 485 (2000).
A statute which eliminated the state lien on real property of persons receiving old age assistance did not violate the state constitutional prohibition against the impairment of the obligation of contracts. Carkulis v. Doe, 164 Mont. 315, 521 P.2d 1305 (1974).

2 Merer by Merer v. Romoff, 172 Misc. 2d 807, 660 N.Y.S.2d 241 (Sup 1997).

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VI. Recovery of Benefits or Support Provided

B. Recovery from Recipient or Estate Thereof

§ 96. Liens on property of recipient—Medicaid antilien provision; effect on statutes granting state subrogation right to settlement proceeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Health 497
West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

With limited exceptions, a federal antilien statute prohibits the imposition of a lien for medical assistance against the property of any individual prior to his or her death.[1] This statute, the Medicaid antilien statute, preempts a state medical assistance lien statute.[2]

A statute granting a state a subrogation right to settlement proceeds that a medical assistance recipient receives is also preempted by the federal Medicaid antilien statute[3] to the extent the state statute allows the State to assert a subrogation right against causes of action or settlements for other than medical expenses.[4] Though the federal statute does not expressly prohibit a state from asserting such subrogation rights, allowing a state to assert subrogation rights outside of the state's assigned right to medical expenses would interfere with the purposes of the federal Medicaid scheme and permit a state to take indirectly what the federal antilien statute prohibits it from attaining directly, that is, a portion of a recipient's personal property.[5] A state statute automatically imposing a lien in favor of the state on tort settlement proceeds obtained by a Medicaid recipient in an amount equal to Medicaid's costs, to the extent that the statute allows an encumbrance or attachment of proceeds meant to compensate the recipient for damages distinct from medical costs, was not authorized by the federal Medicaid law as although the third-party liability provisions of the Medicaid law[6] required recipients, as a condition of eligibility, to assign the state any rights to payment for medical care from any third party, such provisions did not address assignment of payment for lost wages or other damages.[7] Thus, the provision of federal Medicaid law prohibiting states from placing liens against a Medicaid recipient precluded a state statute, which automatically imposed a lien in favor of the state on tort settlement proceeds obtained by a Medicaid recipient in an amount equal to Medicaid's costs, from operating to encumber or attach proceeds meant to compensate the recipient for damages distinct from medical costs.[8]

Observation:

In order to ensure that states are not forcing an assignment of, or placing a lien on, any other portion of a Medicaid recipient's settlement or damages recovered from a tortfeasor, a court is required to make a determination of what portion of a settlement or damages award is attributable to medical expenses.[9]

Settlement proceeds received by a Medicaid recipient in a tort action, upon which a lien was imposed in favor of the state under a state statute, were the recipient's property rather than property of the state, and therefore, the lien violated the federal Medicaid antilien provision, despite the fact that the statute required the recipient, when applying for medical assistance, to assign to the state any right to a settlement or award as a condition of eligibility for Medicaid, as the recipient retained her entire chose in action until judgment, so that the lien did not attach until the proceeds materialized and were in the recipient's possession.[10] A Medicaid recipient's settlement of a tort action without judicial oversight or the involvement of the State, which had a lien on the settlement proceeds under a statute, did not breach any duty of the recipient to cooperate, or create an exception to the federal Medicaid statute's antilien provision, as would allow the State to impose a lien on damages not related to medical costs, as the State, despite having intervened in the tort action, was not involved in and did not ask to be involved in the settlement negotiations.[11]

A state's claim for reimbursement of medical assistance from a personal injury settlement is not preempted by the federal antilien statute, as such a recovery does not become a recipient's property until the State is reimbursed, as such settlement proceeds are assigned by operation of law to the State to the extent that the State has provided benefits to the recipient, and as a result, the State's attempt to recover from the settlement proceeds does not amount to a lien upon the recipient's "property."[12] Likewise, a state's imposition of a lien on the tort recovery of a Medicaid recipient for purposes of recouping medical benefits paid to the recipient did not violate the federal statute that precluded the imposition of a lien against the property of an individual prior to his or her death on account of medical assistance paid, as there was no property of the recipient involved in that the statutory assignment occurred when the Medicaid recipient received medical care, and thus, prior to receiving any proceeds from a later tort recovery, the recipient had already assigned the state his interest in that recovery to the extent of medical assistance actually paid.[13]

CUMULATIVE SUPPLEMENT

Cases:

The Medicaid statutes set both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery, by requiring an assignment to the State of the right to recover that portion of a settlement that represents payments for medical care, but also precluding attachment or encumbrance of the remainder of the settlement. Medicaid Act, § 1917(a)(1), 42 U.S.C.A. § 1396p(a)(1); Social Security Act, §§ 1902(a)(25)(H), 1912(a)(1)(A), 42 U.S.C.A. §§ 1396a(a)(25)(H), 1396k(a)(1)(A). Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (2013).

The Medicaid anti-lien provision prohibits a State from making a claim to any part of a Medicaid beneficiary's tort recovery not designated as payments for medical care. Medicaid Act, § 1917(a)(1), 42 U.S.C.A. § 1396p(a)(1); Social Security Act, §§ 1902(a)(25)(H), 1912(a)(1)(A), 42 U.S.C.A. §§ 1396a(a)(25)(H), 1396k(a)(1)(A). Wos v. E.M.A. ex rel. Johnson, 133 S. Ct. 1391 (2013).

"Clear and convincing evidence," for purposes of requirement that Medicaid recipient, when challenging amount that Agency for Healthcare Administration (AHCA) requires to satisfy Medicaid lien regarding recovery from third party tortfeasor, must prove by clear and convincing evidence that lesser amount of award for paid medical expenses should be allotted from total recovery, requires that the evidence must be found to be credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue, and the evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. Social Security Act § 1902, 42 U.S.C.A. § 1396a(a)(25)(A)-(B); Fla. Stat. Ann. §§ 409.910(11)(f), 409.910(17)(b). Giraldo v. Agency for Health Care Administration, 208 So. 3d 244 (Fla. 1st DCA 2016).

State statute entitling Agency for Healthcare Administration (AHCA) or other state agency to half of a Medicaid recipient's tort recovery from a third party, after attorney fees and costs, up to the amount of its Medicaid lien is preempted by the federal Medicaid statute's anti-lien provision to the extent it creates an irrebuttable presumption and permits recovery beyond that portion of the Medicaid recipient's third party recovery representing compensation for past medical expenses. Medicaid Act, § 1917(a)(1), 42 U.S.C.A. § 1396p(a)(1); West's F.S.A. § 409.910(11)(f). Davis v. Roberts, 130 So. 3d 264 (Fla. 5th DCA 2013).

[END OF SUPPLEMENT]

Footnotes

1 42 U.S.C.A. § 1396p(a)(1).

2 Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1 (Minn. 2002).
As to federal preemption under Medicaid, generally, see § 33.

3 42 U.S.C.A. § 1396p(a)(1)(A).

4 Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1 (Minn. 2002).

5 Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1 (Minn. 2002).

6 42 U.S.C.A. § 1396p(a)(1)(A).

7 Arkansas Dept. of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

8 Arkansas Dept. of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

9 In re E.B., 229 W. Va. 435, 729 S.E.2d 270 (2012).

10 Arkansas Dept. of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

11 Arkansas Dept. of Health and Human Services v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

12 State ex rel. Office of Recovery Services v. McCoy, 2000 UT 39, 999 P.2d 572 (Utah 2000).
As to state's rights in a recipient's claims or demands on third persons, see § 97.

13 Richards v. Georgia Dept. Of Community Health, 278 Ga. 757, 604 S.E.2d 815 (2004).

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B. Recovery from Recipient or Estate Thereof

§ 97. Claims, causes of action, and demands of recipient

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West's Key Number Digest

West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

A.L.R. Library

Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 A.L.R.3d 772

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 65 (Complaint, petition, or declaration—Against tortfeasor—To recover costs of medical aid to injured welfare recipient)

Am. Jur. Pleading and Practice Forms, Welfare Laws § 74 (Claim of lien—By county director of welfare—Against cause of action or recipient in pending tort action)

A recipient of public medical assistance may be required to assign his or her right to recover past and future medical benefits from any potentially liable third party as a condition of eligibility for benefits on the theory that the State is the payor of last resort.[1] Furthermore, state statutes may provide for the imposition of a lien for the amount of welfare assistance furnished, upon claims, demands, and causes of action for injuries to an applicant for or recipient of assistance.[2] As applied to adults, a statute

giving an official of a public welfare district granting assistance a lien on any recipient's right of action for personal injuries is constitutional.[3] Under some statutes, medical malpractice awards are not exempt from such liens.[4]

A county department of social services could bring a direct action against a prevailing personal injury plaintiff to recover public assistance payments made to the plaintiff after the plaintiff reached the age 21, and thus could place a lien against the proceeds of the personal injury settlement, even though the plaintiff was a minor at the time his injuries were sustained.[5]

Footnotes

1 State v. Superior Court (Bolduc), 83 Cal. App. 4th 597, 99 Cal. Rptr. 2d 735 (2d Dist. 2000), as modified, (Sept. 13, 2000).

2 State v. Burnaka, 61 Conn. App. 45, 762 A.2d 485 (2000); Anderson v. Wood, 204 W. Va. 558, 514 S.E.2d 408 (1999).
Recipients of public assistance were not entitled to any relief from the assignment of personal injury settlement proceeds that they executed in favor of a county department of social services; there was no evidence that the department had improperly attempted to recover settlement proceeds that were not subject to a lien and the recipients' unsubstantiated claim of ignorance as to the effect of the assignment they executed was belied by the assignment's unambiguous provisions. Soleimani v. Nassau County Dept. of Social Services, 278 A.D.2d 330, 717 N.Y.S.2d 350 (2d Dep't 2000).

3 People v. Bellamy, 92 Misc. 2d 211, 399 N.Y.S.2d 990 (Sup 1977).

4 Carl Peter, as Adm'r of Estate of Peter v. Yu, 173 Misc. 2d 911, 661 N.Y.S.2d 893 (Sup 1997).

5 Thurston v. Durose, 76 N.Y.2d 683, 563 N.Y.S.2d 37, 564 N.E.2d 647 (1990).

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B. Recovery from Recipient or Estate Thereof

§ 98. Claims, causes of action, and demands of recipient—Medicaid payments made to recipient for injuries caused by third-party tortfeasor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Health 496(1), 496(2), 497
West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

A.L.R. Library

Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 A.L.R.3d 772

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 65 (Complaint, petition, or declaration—Against tortfeasor—To recover costs of medical aid to injured welfare recipient)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 74 (Claim of lien—By county director of welfare—Against cause of action or recipient in pending tort action)

Statutes in some states allow the State to recover Medicaid payments made to a recipient for injuries caused by a third-party tortfeasor.[1] To obtain reimbursement when a third party is liable for a recipient's medical expenses that the State has paid, the State may pursue those claims against the third party directly pursuant to an assignment and subrogation scheme or, alternatively,

indirectly by placing a lien on personal injury judgments or settlements obtained by a Medicaid recipient from a liable third party.[2] A statute that allows the State to recover Medicaid payments made to a recipient for injuries caused by a third-party tortfeasor by placing a lien on funds recovered by the recipient from the tortfeasor may apply to all recovered funds, not just funds specifically denominated as being reimbursement for medical expenses.[3]

A Medicaid recipient's failure to expressly exclude the State's claim for reimbursement of Medicaid expenses, when the recipient pursues a claim against a third party who caused the injuries which required the recipient to seek medical care, does not prejudice the State's claim for reimbursement.[4] A medical benefits recovery act may contemplate that a Medicaid recipient can proceed with an independent action against a third party who caused injuries which required the recipient to seek medical care in cases where the State denies consent to include the State's claim.[5] However, such an act imposes no express obligation on the recipient to expressly exclude the State's claim in such cases, and instead the language in the act serves to preserve the State's claim against the third party whether or not the recipient expressly excludes the State's claim from his or her own action or negotiations, putting the third party on notice that, in the absence of the State's written consent, the State will not be bound by any representations made by a recipient as to whether the State's claim is included, nor will the State be bound by any release of claims signed by a recipient.[6]

A statutory scheme authorizing the State to recover the value of Medicaid-provided medical treatment from third parties who caused injury that required treatment does not authorize the State to assert a lien against a wrongful death recovery against a third party that does not include compensation for the Medicaid beneficiary's medical expenses when the survivors' wrongful death damages are separate from the decedent's damages and are not attributable to the costs of the decedent's medical treatment.[7]

A state's lien interest in a Medicaid recipient's lump sum settlement of medical malpractice claims may be limited to funds allocated solely to past, not future, medical expenses.[8]

A state Medicaid statute defining, for purposes of the state's statutory subrogation claim for reimbursement for the state's payment of Medicaid recipient's medical expenses, the medical expense portion of a Medicaid recipient's settlement of tort claims against third parties as the lesser of the state's past medical expenditures or one-third of the total settlement amount is a reasonable method for determining the state's right to reimbursement, for purposes of the federal Medicaid statute[9] requiring states that participate in the Medicaid program to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the Medicaid program.[10]

A Medicaid recipient's private insurer was a "third party" source, as that term was used in state and federal Medicaid reimbursement law, and therefore, funds from the insurer were not excluded from the sources of reimbursement available to the state, as Medicaid was designed to be the payer of last resort, available only when no other source was liable for the expense, and, were a payment by a Medicaid recipient's own health or auto insurer to be classified as a "first-party" source beyond the reach of the state, a recipient might receive duplicate payment for the same injury, once through the Medicaid program administered by the State and once through private insurance.[11] However, a state did not have a right to immediate reimbursement of Medicaid expenses from the liability insurance proceeds distributed to Medicaid recipients who were severely injured in a one-car accident involving a vehicle driven by the insured, and the insurance proceeds could instead be deposited into a special needs trust for the recipients' benefit during their lifetime, where the State did not have a written assignment of rights from the recipients, and the State did not inform the recipients of the consequences of receiving treatment covered by Medicaid, i.e., that they would be deemed to have automatically assigned their rights to recover.[12]

Footnotes

1 Fitch v. Select Products Co., 36 Cal. 4th 812, 31 Cal. Rptr. 3d 591, 115 P.3d 1233 (2005); Richards v. Georgia Dept. Of Community Health, 278 Ga. 757, 604 S.E.2d 815 (2004); Andrews ex rel. Andrews v. Haygood, 362 N.C. 599, 669 S.E.2d 310 (2008); Houghton v. Department of Health, 2005 UT 63, 125 P.3d 860 (Utah 2005).

2 State v. Peters, 287 Conn. 82, 946 A.2d 1231 (2008).

3 Richards v. Georgia Dept. Of Community Health, 278 Ga. 757, 604 S.E.2d 815 (2004).

4 Houghton v. Department of Health, 2005 UT 63, 125 P.3d 860 (Utah 2005).

5 Houghton v. Department of Health, 2005 UT 63, 125 P.3d 860 (Utah 2005).

6 Houghton v. Department of Health, 2005 UT 63, 125 P.3d 860 (Utah 2005).

7 Fitch v. Select Products Co., 36 Cal. 4th 812, 31 Cal. Rptr. 3d 591, 115 P.3d 1233 (2005).

8 In re E.B., 229 W. Va. 435, 729 S.E.2d 270 (2012).

9 42 U.S.C.A. § 1396a(a)(25)(A), (B).

10 Andrews ex rel. Andrews v. Haygood, 362 N.C. 599, 669 S.E.2d 310 (2008).

11 Blanton v. Department of Public Health and Human Services, 2011 MT 110, 360 Mont. 396, 255 P.3d 1229 (2011).

12 Ex parte South Carolina Dept. of Health and Human Services, 364 S.C. 527, 614 S.E.2d 609 (2005).

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VI. Recovery of Benefits or Support Provided

B. Recovery from Recipient or Estate Thereof

§ 99. Priority of claims and liens

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 70, 130, 192, 193, 218

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State Criminal Prosecution Against Medical Practitioner for Fraud in Connection with Claims Under Medicaid, Medicare, or Similar Welfare Program for Providing Medical Services, 79 A.L.R.6th 125

Forms

Am. Jur. Legal Forms 2d § 136:29.50

Statutes sometimes provide for the priority or preference of liens against a public assistant recipient's estate and for liens against a recipient's causes of action against a third party.[1] For instance, under some statutes claims for debts owed to a state for expenses incurred by a state hospital in treating a patient and for the cost of the patient's nursing home care take precedence over a deceased patient's homestead exemption.[2] The claim of the state which is a lien against the proceeds of causes of action of a recipient may have priority over all other claims except attorney's fees.[3] However, under a statute providing that the state's lien for medical assistance provided has priority over "any lien thereafter recorded or filed," a condominium association's common

expense lien was wholly prior to the state's lien for medical assistance payments where the unit owners' initial default in payment of monthly assessments occurred before the State recorded its lien.[4]

Under one such statute the State becomes a preferred creditor, thereby enjoying a different status than that of a common-law creditor or ordinary contract obligee insofar as having its claim for such costs determined and enforced.[5]

Footnotes

1 State v. Burnaka, 61 Conn. App. 45, 762 A.2d 485 (2000); Lake Hinsdale Village Condominium Ass'n v. Department of Public Aid, 298 Ill. App. 3d 192, 232 Ill. Dec. 376, 698 N.E.2d 214 (2d Dist. 1998); In re Estate of Mathews, 558 N.W.2d 263 (Minn. Ct. App. 1997).

2 In re Estate of Mathews, 558 N.W.2d 263 (Minn. Ct. App. 1997).

3 State v. Burnaka, 61 Conn. App. 45, 762 A.2d 485 (2000).

4 Lake Hinsdale Village Condominium Ass'n v. Department of Public Aid, 298 Ill. App. 3d 192, 232 Ill. Dec. 376, 698 N.E.2d 214 (2d Dist. 1998).

5 Matter of Lainez, 102 Misc. 2d 138, 422 N.Y.S.2d 849 (Sur. Ct. 1979), rev'd on other grounds, 79 A.D.2d 78, 435 N.Y.S.2d 798 (2d Dep't 1981), order aff'd, 55 N.Y.2d 657, 446 N.Y.S.2d 942, 431 N.E.2d 303 (1981).

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VI. Recovery of Benefits or Support Provided

B. Recovery from Recipient or Estate Thereof

§ 100. Priority of claims and liens—Medicaid recipient's settlements and allocation thereof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Health 496(1), 496(2), 497
West's Key Number Digest, Public Assistance 70, 71, 130, 131, 192, 193, 218

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State Criminal Prosecution Against Medical Practitioner for Fraud in Connection with Claims Under Medicaid, Medicare, or Similar Welfare Program for Providing Medical Services, 79 A.L.R.6th 125

Forms

Am. Jur. Legal Forms 2d § 136:29.50

A statutory presumption that the State has a first claim against a settlement for medical expenses it had advanced on behalf of a Medicaid recipient where the settlement does not indicate what portion is attributable to medical expenses applied with respect to determining the appropriate allocation of settlement funds between the State for reimbursement of medical expenses it had paid and the Medicaid recipient, who had brought a personal injury action against the alleged tortfeasor that caused his injuries and obtained a settlement, as the settlement did not delineate the portion attributable to medical expenses, and the

recipient "received" the settlement for purposes of the presumption when the judge in the personal injury action entered an order approving the settlement.[1]

Observation:

The statutory presumption that the State has a first claim against a settlement for medical expenses it has advanced on behalf of a Medicaid recipient where a settlement does not indicate what portion is attributable to medical expenses does not violate the antilien provision of the federal Medicaid statute[2] as the state statute does not require an automatic assignment of a settlement to the State, regardless of how much of the settlement represented medical expenses, but instead creates a procedure for determining a settlement allocation by imposing a presumption that an unallocated settlement would be allocated first to past medical expenses.[3]

A state does not have an absolute priority to recover full reimbursement from any settlement, compromise, judgment, or award obtained by a recipient of Medicaid benefits from a third-party tortfeasor; rather, it maintains a priority right to be paid first out of any damages representing payments for past medical expenses before the recipient can recover any of his or her own costs for medical care.[4] In the event of the need for judicial allocation of a Medicaid recipient's lump-sum settlement on a claim against a third-party tortfeasor, for the purposes of calculating the State's lien interest in the recipient's recovery for medical expenses, upon hearing all of the evidence, the trial court should allocate the settlement between the past medical expenses and other damages in a fair and equitable manner and should allow the State a first lien against the past medical expenses portion of the settlement, and in order to achieve a fair and equitable allocation, the trial court must conduct a balancing of the interests of both the plaintiff and the State.[5]

A ratio formula for allocating a lump sum settlement on a Medicaid recipient's medical malpractice claims to the recipient's medical expenses, pursuant to which the recipient's medical expenses were determined to be a percentage of the value of the recipient's entire claim, and then applied as a percentage to the total amount of the settlement, was a permissible method for determining the state's priority lien interest in the recipient's settlement attributable to past medical expenses.[6]

However, consistent with federal Medicaid law, a state could seek reimbursement for its past medical expenses from the portion of a Medicaid recipient's litigation settlement funds allocated to "medical expenses," regardless of the method used to make that allocation and regardless of whether those funds were allocated for past or future medical expenses, since because the recipient intended to stay on Medicaid, any funds allocated for future medical expenses would rightfully be exposed to the State's lien so that the State could be reimbursed for its past medical payments.[7]

Footnotes

1 State Dept. of Health and Welfare v. Hudelson, 146 Idaho 439, 196 P.3d 905 (2008) (abrogated on other grounds by, Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 265 P.3d 502 (2011)).

2 42 U.S.C.A. § 1396p(a)(1).
As to the Medicaid antilien statute, see § 96.

3 State Dept. of Health and Welfare v. Hudelson, 146 Idaho 439, 196 P.3d 905 (2008) (abrogated on other grounds by, Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 265 P.3d 502 (2011)).

4 In re E.B., 229 W. Va. 435, 729 S.E.2d 270 (2012).

5 In re E.B., 229 W. Va. 435, 729 S.E.2d 270 (2012).

6 In re E.B., 229 W. Va. 435, 729 S.E.2d 270 (2012).

7 I.P. ex rel. Cardenas v. Henneberry, 795 F. Supp. 2d 1189 (D. Colo. 2011).

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VI. Recovery of Benefits or Support Provided

B. Recovery from Recipient or Estate Thereof

§ 101. Effect of statutes of limitations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 70, 130, 192, 193, 218

Claims by a welfare department against the estate of one who has received welfare benefits may not be subject to any statute of limitations.[1]

Under a statute authorizing a public welfare official to bring a proceeding against a recipient, who is discovered to own real or personal property, the state has 10 years to discover assets available for recoupment, and if the public assistance recipient is still living, a county department of social services must commence an action to recoup assistance within six years from the date of the discovery of the property, but if the public assistance recipient is deceased, the six-year period runs from the date of the appointment of a fiduciary upon whom process can be served.[2]

Footnotes

1 Murphy's Estate v. State Dept. of Public Welfare, 293 Minn. 298, 198 N.W.2d 570 (1972).

2 Matter of Estate of Bustamante, 173 Misc. 2d 289, 661 N.Y.S.2d 507 (Sur. Ct. 1997), order aff'd, 256 A.D.2d 463, 682 N.Y.S.2d 102 (2d Dep't 1998).

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VII. Determination and Enforcement of Rights

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3874(1) to 3874(3)
West's Key Number Digest, Federal Civil Procedure 103.2, 189
West's Key Number Digest, Federal Courts 192.5
West's Key Number Digest, Parties 35.89
West's Key Number Digest, Public Assistance 52, 62 to 69, 117, 126 to 129, 160
West's Key Number Digest, Social Security and Public Welfare 175.25, 175.30

A.L.R. Library

A.L.R. Index, Poor Persons
West's A.L.R. Digest, Constitutional Law 3874(1) to 3874(3)
West's A.L.R. Digest, Federal Civil Procedure 103.2, 189
West's A.L.R. Digest, Federal Courts 192.5
West's A.L.R. Digest, Parties 35.89
West's A.L.R. Digest, Public Assistance 52, 62 to 69, 117, 126 to 129, 160
West's A.L.R. Digest, Social Security and Public Welfare 175.25, 175.30

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79 Am. Jur. 2d Welfare § 102

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VII. Determination and Enforcement of Rights

§ 102. Generally; standing

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3874(1) to 3874(3)
West's Key Number Digest, Federal Civil Procedure 103.2
West's Key Number Digest, Federal Courts 192.5
West's Key Number Digest, Public Assistance 52, 62, 117, 126, 159, 160
West's Key Number Digest, Social Security and Public Welfare 175.25

The courts have recognized that a welfare recipient's property rights in the receipt of such assistance runs along a spectrum of property rights from absolute entitlement to no entitlement at all, while in between lies an area of property rights that, while not absolute, invokes due process protection. On the "absolute" entitlement end of the spectrum, there is the notion of a property right that creates a right of action to sue the State under certain entitlement programs. In a related concept, the political and fiscal notion of "entitlement" requires states, in order to receive matching funds from the federal government, to comply with federal guidelines and then to provide the necessary funding to all eligible participants.[1]

Another, less absolute notion of property rights relates to property allocated on the basis of a regulatory scheme. Such a regulatory scheme, which contains discretion-constraining standards, invokes constitutional due process protection. In such a situation, the potential recipient's compliance with the statutory standards, rather than the decision of an official, gives rise to the welfare benefit.[2]

The current structure of the Temporary Assistance to Needy Families block grant program provides, in essence, that the federal government may or may not disburse funds to states for welfare purposes, depending on whether funds are available. At that stage of the process, a participant's right to welfare benefits has not yet matured into a personal "entitlement." The federal government may decide not to make funding available to the states for welfare programs and may withhold funding from states that fail to follow federal standards. However, once a state, having enacted the legislation required by federal statute, receives a federal block grant for the express purpose of distribution as welfare benefits, welfare recipients will receive the money if they comply with the statutory standards.[3] Further, once welfare recipients have complied with statutory standards and have begun

receiving welfare benefits, the right to welfare benefits is a property right that cannot be compromised without procedural due process protections.[4]

Under some public assistance regulations, standing to request an administrative hearing is not explicitly or implicitly limited to the person or entity which filed the paperwork that gave rise to the dispute, but rather, standing arises from the actual harm or adverse affect resulting from the agency action.[5] Some statutes provide that any person adversely affected or aggrieved by any agency action may commence an action for judicial review although such a provision does not provide a county with standing to sue to compel a Department of Human Services to reduce the statewide rate of social services expenditures.[6]

A cause of action for relief benefits has been said to be personal to the beneficiary who qualifies and does not survive the death of the beneficiary.[7]

As the intended beneficiaries of the Food Stamp Act of 1964, poor persons have standing to complain of illegalities in the administration of the Food Stamp program.[8]

A hospital may seek judicial review of general regulations for the determination of rights of payment to hospitals for care of indigent patients under Medicaid.[9]

A petition by a recipient of public assistance for a review of an agency's temporary discontinuation of the recipient's benefits was not rendered moot by the fact that the recipient ceased to receive public assistance during the pendency of the proceeding where the agency's determination had the potential to affect the recipient's future eligibility for benefits.[10] However, a challenge to the termination of public assistance benefits has been found to be moot where the claimant is no longer eligible for relief, including a correction of underpayments.[11]

A medical care provider may have standing to seek judicial review of a final decision of a county board denying a medical indigency application.[12]

In one state, actions brought before the Board of Public Assistance are subject to the requirements of the State Administrative Procedure Act,[13] while in another the State Administrative Procedures Act does not apply to contested cases involving the receipt of public assistance.[14]

A state health and human services commission acted within its authority when it reconsidered and reversed its determination that a Medicaid health maintenance organization (HMO) was responsible for a patient's medical expenses arising after the patient, who was a mandatory participant in the HMO under a federal waiver for Temporary Assistance for Needy Families program recipients, became eligible for Supplemental Security Income as the commission was not prohibited from reconsidering its determinations about the patient's eligibility or the obligation of the HMO for her medical expenses.[15]

Footnotes

1 Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

2 Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

3 Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

4 Weston v. Cassata, 37 P.3d 469 (Colo. App. 2001).

5 Indiana Family and Social Services Admin. v. Methodist Hosp. of Indiana, Inc., 669 N.E.2d 186 (Ind. Ct. App. 1996).

6 Romer v. Board of County Com'rs of County of Pueblo, Colo., 956 P.2d 566 (Colo. 1998), as modified on denial of reh'g, (Apr. 27, 1998).

7 Creighton v. Pope County, 386 Ill. 468, 54 N.E.2d 543, 153 A.L.R. 802 (1944).

8 Peoples v. U.S. Dept. of Agriculture, 427 F.2d 561 (D.C. Cir. 1970).

9 Massachusetts General Hospital v. Rate Setting Commission, 359 Mass. 157, 269 N.E.2d 78 (1971).

10 Rukenstein v. McGowan, 273 A.D.2d 21, 709 N.Y.S.2d 42 (1st Dep't 2000).

11 Ortiz v. Hammons, 171 Misc. 2d 699, 654 N.Y.S.2d 993 (Sup 1997).

12 St. Luke's Regional Medical Center, Ltd. v. Board of Com'rs of Ada County, 146 Idaho 753, 203 P.3d 683 (2009).

13 Hofer v. Montana Dept. of Public Health and Human Services, 2005 MT 302, 329 Mont. 368, 124 P.3d 1098 (2005).

14 J.S. ex rel. S.N. v. Hardy, 229 W. Va. 251, 728 S.E.2d 135 (2012).

15 Methodist Hospitals of Dallas v. Amerigroup Texas, Inc., 231 S.W.3d 483 (Tex. App. Dallas 2007).

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§ 103. Requirement of exhaustion of administrative remedies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 63, 127, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

A recipient of public assistance may be required to exhaust available administrative remedies before being eligible to seek a judicial review of an administrative determination.[1] However, one who is denied state and federal aid to dependent children because of an allegedly unconstitutional state welfare regulation is not required to exhaust state administrative remedies before bringing suit in a Federal District Court for declaratory and injunctive relief.[2] The exhaustion of administrative remedies is also not required when the pursuit of administrative remedies would be futile.[3] Likewise, it has been held that the rule requiring exhaustion of administrative remedies does not make a request for a hearing before a welfare board a prerequisite to the maintenance of a class action.[4]

Footnotes

1 Kemp v. Erie County Dept. of Social Services, 266 A.D.2d 905, 697 N.Y.S.2d 797 (4th Dep't 1999).
A proceeding to compel a city to provide emergency rent arrears to mentally disabled tenants who were evicted, while characterized as sounding in mandamus, improperly sought to compel the manner in which judgment or discretion was exercised, for which an exhaustion of administrative remedies was required. Frumoff v. Wing, 239 A.D.2d 216, 657 N.Y.S.2d 646 (1st Dep't 1997).

2 Carter v. Stanton, 405 U.S. 669, 92 S. Ct. 1232, 31 L. Ed. 2d 569, 15 Fed. R. Serv. 2d 1521 (1972).
When the only challenge to a county board of social services' policy is based on constitutional grounds and no factual issues exist which require an administrative determination, the doctrine of exhaustion of administrative remedies is not applicable, and judicial intervention is justified. Sanchez v. Department of Human Services, 314 N.J. Super. 11, 713 A.2d 1056 (App. Div. 1998).

3 Brukhman v. Giuliani, 174 Misc. 2d 26, 662 N.Y.S.2d 914 (Sup 1997), rev'd on other grounds, 253 A.D.2d 653, 678 N.Y.S.2d 45 (1st Dep't 1998), aff'd, 94 N.Y.2d 387, 705 N.Y.S.2d 558, 727 N.E.2d 116 (2000).

4 Ramos v. County of Madera, 4 Cal. 3d 685, 94 Cal. Rptr. 421, 484 P.2d 93 (1971).
As to class actions in public welfare cases, see § 110.

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§ 104. Judicial review of determinations; hearings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Federal Courts 192.5
West's Key Number Digest, Public Assistance 62 to 69, 126 to 129, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

A.L.R. Library

Propriety of telephone testimony or hearings in public welfare proceedings, 88 A.L.R.4th 1094

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 33 (Checklist—Drafting a complaint, petition, or declaration for the enforcement of welfare rights after an adverse administrative decision)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 41 (Complaint, petition, or declaration—Appeal from state welfare agency administrative proceeding for failure to grant elective medical treatment)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 42 (Petition or application—For review and reversal of denial by county welfare department of indigent status of emergency hospital patient)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 43 (Petition or application—For judicial review and reversal of denial by county welfare department of indigent status)

Public assistance laws sometimes provide for either administrative[1] or judicial[2] review of administrative decisions that adversely affect an individual. In some states, however, a discretionary determination relating to the receipt of benefits is not subject to judicial review.[3]

Administrative hearings are often conducted pursuant to a state administrative procedure act,[4] and at such administrative hearings, the usual evidentiary rules need not apply and hearsay may be admitted, and without relying solely on incompetent evidence, hearsay together with other probative evidence can be utilized to reach a true factual finding in such a hearing.[5] A hearing officer is empowered to determine questions of evidentiary weight and matters of credibility and, absent a capricious disregard of the evidence, a hearing officer's conclusion will not be disturbed on appeal.[6] The denial of an application for Medicaid benefits may be reviewed under a state's Administrative Procedure Act.[7]

In reviewing a claim for social security benefits, a hearing officer has the duty to develop the record fully and fairly,[8] and the findings of a hearing officer must contain a detailed evaluation of statutory or regulatory criteria and evidence.[9]

CUMULATIVE SUPPLEMENT

Cases:

Provider of medical equipment to Medicaid recipients did not satisfy statutory requirements for perfecting appeal of decision of State Department of Human Services, which found that provider did not comply with billing procedures and that recoupment of overpayments was proper, and thus district court lacked subject matter jurisdiction over provider's appeal of decision; provider served notice of appeal on assistant attorney general but not on Department, Department was not represented by an attorney when assistant attorney general was served, and statute required service upon Department and attorney general. NDCC §§ 28-32-42, 50-24.1-24; N.D. R. Civ. P. 5(b). Altru Specialty Services, Inc. v. North Dakota Department of Human Services, 2017 ND 270, 903 N.W.2d 721 (N.D. 2017).

Suspensions of a Medicaid provider agreements based on credible allegations of fraud do not issue as "adjudication orders" under Medicaid statute, and therefore the administrative appeal right granted to such orders does not attach. R.C. §§ 119.12, 5164.38(C, D, E). Nkanginieme v. Ohio Dept. of Medicaid, 2015-Ohio-656, 29 N.E.3d 281 (Ohio Ct. App. 10th Dist. Franklin County 2015).

[END OF SUPPLEMENT]

Footnotes

1 Sacred Heart Medical Center v. Kootenai County Com'rs, 136 Idaho 787, 41 P.3d 215 (2001); Coker v. City of Lewiston, 1998 ME 93, 710 A.2d 909 (Me. 1998); Fosselman v. Commissioner of Human Services, 612 N.W.2d 456 (Minn. Ct. App. 2000).

2 Romer v. Board of County Com'rs of County of Pueblo, Colo., 956 P.2d 566 (Colo. 1998), as modified on denial of reh'g, (Apr. 27, 1998); L.Y. v. Department of Health and Rehabilitative Services, 696 So. 2d 430 (Fla. 4th DCA 1997).

3 Bishop v. New York State Dept. of Social Services, 246 A.D.2d 391, 667 N.Y.S.2d 731 (1st Dep't 1998).

4 Sacred Heart Medical Center v. Kootenai County Com'rs, 136 Idaho 787, 41 P.3d 215 (2001); Mosby v. State through Office of Secretary, Dept. of Social Services, 672 So. 2d 246 (La. Ct. App. 2d Cir. 1996).

5 Mosby v. State through Office of Secretary, Dept. of Social Services, 672 So. 2d 246 (La. Ct. App. 2d Cir. 1996).

6 Accordingly, credibility determinations made by a hearing officer in making a determination on public assistance benefits are entitled to considerable weight and are significant in determining whether substantial evidence exists to support the determination. Heaney v. Wing, 249 A.D.2d 1004, 672 N.Y.S.2d 168 (4th Dep't 1998); Renee v. Department of Public Welfare, 702 A.2d 575 (Pa. Commw. Ct. 1997).

7 Stafford v. Idaho Dept. of Health & Welfare, 145 Idaho 530, 181 P.3d 456 (2008).

8 Axilrod v. State, Dept. of Children and Family Services, 799 So. 2d 1103 (Fla. 4th DCA 2001).

9 Sapp v. Florida Dept. of Children and Families, 801 So. 2d 213 (Fla. 4th DCA 2001).

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§ 105. Judicial review of determinations; hearings—Constitutional requirements of administrative hearing

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3874(1) to 3874(3)
West's Key Number Digest, Federal Civil Procedure 103.2
West's Key Number Digest, Federal Courts 192.5
West's Key Number Digest, Public Assistance 62 to 69, 126 to 129, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

A.L.R. Library

Sufficiency of notice or hearing required prior to termination of welfare benefits, 47 A.L.R.3d 277
Right to notice and hearing prior to termination of Medicaid payments to nursing home under Medicaid provisions of Social Security Act (42 U.S.C.A. secs. 1396 et seq.), 37 A.L.R. Fed. 682

A state must, under the Due Process Clause of the 14th Amendment, afford a welfare recipient the opportunity for an evidentiary hearing prior to the termination or suspension of public assistance payments.[1] However, the clear purpose of such a hearing is to give eligible recipients an opportunity to prove the facts of their eligibility before their benefits are terminated and where there is no disagreement as to the facts but only a dispute on a point of law a hearing need not be held.[2] Moreover, there is no violation of welfare recipients' right of due process, and the provisions of a statute requiring notice of rejection of an application for public assistance or for modification of assistance is inapplicable where a state agency, uniformly on a statewide basis, makes a reduction in benefits to a statewide class of recipients.[3]

It has further been held that the hearing requirement is applicable to a decision to reduce welfare benefits.[4] However, it is not necessary that notice of termination of benefits to persons who are literate only in a foreign language be given in such language.[5]

Minimal procedural safeguards required in the conduct of proceedings held prior to the termination of welfare benefits require, at the least, a timely and adequate notice of the proposed discontinuance of benefits and the reason for such discontinuance, the right to appear before an impartial official, and the opportunity to confront and cross-examine witnesses, retain an attorney, and present oral evidence.[6] A fair hearing on the discontinuance of public assistance did not conform with due process requirements, given the brevity of the hearing and the administrative law judge's complete failure to develop the testimony presented by the pro se recipient.[7]

City and state departments of social services, who failed to appear at an administrative fair hearing regarding an applicant's entitlement to public assistance benefits, could not decide on their own, without affording the applicant an opportunity to contest the departments' position that a deficiency in benefits was made up.[8]

Footnotes

1 Hackney v. Machado, 397 U.S. 593, 90 S. Ct. 1347, 25 L. Ed. 2d 592 (1970).
A statute providing for state agency hearings to review Department of Human Services (DHS) matters affords a statutory right to a hearing where due process rights would otherwise be violated, as the phrase, "other provision of law," within the meaning of the statute's grant of a hearing to "any person to whom a right of appeal according to this section is given by other provision of law" is to be construed to include due process. Fosselman v. Commissioner of Human Services, 612 N.W.2d 456 (Minn. Ct. App. 2000).
A state statute providing a recipient of poor relief an opportunity to object to a termination decision by an overseer of the poor, by an appeal to the county commissioners is unconstitutional on its face for want of due process in failing to provide, among other things, a predetermination hearing, an effective opportunity for the recipient to defend, and a want of due notice of the reasons for the termination. Brooks v. Center Tp., 485 F.2d 383 (7th Cir. 1973).

2 Russo v. Kirby, 453 F.2d 548 (2d Cir. 1971).

3 Riggins v. Graham, 20 Ariz. App. 196, 511 P.2d 209 (Div. 1 1973).

4 Woodson v. Houston, 27 Mich. App. 239, 183 N.W.2d 465 (1970).

5 Guerrero v. Carleson, 9 Cal. 3d 808, 109 Cal. Rptr. 201, 512 P.2d 833 (1973).

6 Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970).
The State provided a constitutionally adequate process under the Due Process Clause by way of the administrative appeals process for decisions as to applications for Ohio Works First assistance. Mankins v. Paxton, 142 Ohio App. 3d 1, 753 N.E.2d 918 (10th Dist. Franklin County 2001).

7 Feliz v. Wing, 285 A.D.2d 426, 729 N.Y.S.2d 13 (1st Dep't 2001).

8 Daniels v. Hammons, 228 A.D.2d 341, 644 N.Y.S.2d 248 (1st Dep't 1996).

79 Am. Jur. 2d Welfare § 106

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§ 106. Judicial review of determinations; hearings—Waiver of hearing or review

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 63, 127, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

A recipient of benefits does not waive the right to an administrative hearing where the appropriate agency fails to establish that the recipient had been notified of the right to request a hearing and the time for doing so.[1]

A public assistance claimant may waive a judicial review of an issue by failing to raise the issue at an administrative hearing[2] or at a trial.[3] However, the failure of a pro se public assistance benefits recipient to preserve objections at a fair hearing on an agency's decision to terminate benefits did not waive those objections where many of the objections related to the agency's burden of proof to have its determination affirmed.[4]

Footnotes

1 Bryant v. Department of Health & Rehabilitative Services, 680 So. 2d 1144 (Fla. 3d DCA 1996).
2 Vicari v. Wing, 244 A.D.2d 974, 665 N.Y.S.2d 209 (4th Dep't 1997).
3 Parrish v. Pike Tp. Trustee's Office of Marion County, 742 N.E.2d 515 (Ind. Ct. App. 2001).
4 Nembhard v. Turner, 183 Misc. 2d 73, 703 N.Y.S.2d 673 (Sup 1999).

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§ 107. Judicial review of determinations; hearings —Scope of judicial review of administrative ruling

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 66, 128, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

A.L.R. Library

Judicial review under 42 U.S.C.A. sec. 1316(a)(3-5) of determination by Secretary of Health, Education, and Welfare that state public-assistance plan does not conform to federal requirements, 18 A.L.R. Fed. 831

Various standards of review, depending on the particular state, are applied in state proceedings to review an administrative decision of a state agency or department. It has been said that the applicable standard of review on appeal from a decision on an application for public assistance benefits depends upon the errors alleged[1] and that the appropriate standard of review for an assertion that a decision is based on an error of law is de novo review.[2] The standard of review of the facts of a termination of Medicaid and other benefits case is whether the trial court abused its discretion in determining that the administrative decision was supported by reliable, probative, and substantial evidence, and an "abuse of discretion" is defined as a decision which is unreasonable, arbitrary, or unconscionable.[3] In one state, in reviewing a denial of benefits, an appellate court stands in the shoes of the trial court and looks to see if the denial of benefits was arbitrary, capricious, an abuse of discretion, or contrary to law.[4] In another state, upon review of a decision of the Department of Human Services, the courts determine whether the Department's findings of fact are supported by a preponderance of the evidence, whether its conclusions of law are supported by its findings of fact, and whether its decision is in accordance with the law.[5] A similar standard provides that the scope of review of a final order of a Department of Public Welfare is limited to determining whether an error of law was committed, whether constitutional rights were violated, or whether necessary findings of fact are supported by substantial evidence.[6]

It has been held that a judicial review of an administrative determination made under the Food Stamp Act of 1964 should be undertaken by a court sitting without a jury, which court, because the trial is de novo, may consider evidence which was not considered by the authority making the administrative determination.[7] It is also clear that upon such trial de novo, the court reviewing the administrative action taken by the food stamp review officer is limited to a determination of the validity of that official action, which will not be disturbed if supported by substantial evidence.[8] Thus, the findings of such officers, suspending food stores for definitely stated periods of time for violation of such regulations, will not be overturned unless unsupported by substantial evidence.[9]

The party challenging a county board of commissioners' decision regarding an application for medical indigency benefits must show the board's error, and the board's decision may be overturned only if the reviewing court finds that it: (1) violates statutory or constitutional provisions; (2) exceeds the board's statutory authority; (3) is made upon unlawful procedure; (4) is not supported by substantial evidence in the record; or (5) is arbitrary, capricious, or an abuse of discretion.[10] In reviewing a county board of commissioners' denial of an application for medical indigency benefits, a court will not substitute its judgment for that of the county on questions of fact if the county's findings are supported by substantial and competent evidence, but the court is free to correct errors of law in the county's decision.[11]

CUMULATIVE SUPPLEMENT

Cases:

District court correctly concluded that the date of hospital admission must be excluded when determining the application for medical indigency benefits deadline, under statute governing time and manner of filing application for financial assistance related to indigent medical care. West's I.C.A. §§ 31–3505(3), 73–109. Saint Alphonsus Regional Medical Center v. Gooding County, 356 P.3d 377 (Idaho 2015).

Secretary of the Agency of Human Services acts as an appellate body, reviewing the Humans Services Board's findings and conclusions regarding Medicaid benefits to ensure that it applied the appropriate legal standards under the relevant agency rules and policies, and that there is some factual support for its decision. 3 V.S.A. § 3091(h)(1)(A)(i, ii). In re Landry, 2015 VT 6, 119 A.3d 455 (Vt. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Arrowood v. N.C. Dept. of Health and Human Services, 140 N.C. App. 31, 535 S.E.2d 585 (2000), rev'd on other grounds, 353 N.C. 351, 543 S.E.2d 481 (2001).

2 Alden Nursing Center-Lakeland, Inc. v. Patla, 317 Ill. App. 3d 1, 250 Ill. Dec. 907, 739 N.E.2d 904 (1st Dist. 2000); Arrowood v. N.C. Dept. of Health and Human Services, 140 N.C. App. 31, 535 S.E.2d 585 (2000), rev'd on other grounds, 353 N.C. 351, 543 S.E.2d 481 (2001).
Although the Supreme Court gives great weight to Department of Social Services' rules, when the resolution of a dispute presents conclusions of law the Supreme Court accords no deference to the conclusions reached by the Department or the circuit court, and whether the Department correctly applied its rules presents a question of law. Feltrop v. South Dakota Dept. of Social Services, 1997 SD 13, 559 N.W.2d 883 (S.D. 1997).

3 Metz v. Ohio Dept. of Human Serv., 145 Ohio App. 3d 304, 762 N.E.2d 1032 (6th Dist. Ottawa County 2001) (abrogated on other grounds by, Pack v. Osborn, 117 Ohio St. 3d 14, 2008-Ohio-90, 881 N.E.2d 237 (2008)).

4 Sanders v. State Family and Social Services Admin., 696 N.E.2d 69 (Ind. Ct. App. 1998).

5 Dozier v. Williams County Social Service Bd., 1999 ND 240, 603 N.W.2d 493 (N.D. 1999).

6 Britt v. Department of Public Welfare, 787 A.2d 457 (Pa. Commw. Ct. 2001).

7 J. L. Saunders, Inc. v. U.S., 52 F.R.D. 570 (E.D. Va. 1971).

8 Save More of Gary, Inc. v. U.S., 442 F.2d 36 (7th Cir. 1971); Farmingdale Supermarket, Inc. v. U.S., 336 F. Supp. 534 (D.N.J. 1971).

9 Farmingdale Supermarket, Inc. v. U.S., 336 F. Supp. 534 (D.N.J. 1971).

10 Mercy Medical Center v. Ada County, Bd. of County Commissioners of Ada County, 146 Idaho 226, 192 P.3d 1050 (2008).

11 St. Luke's Magic Valley Regional Medical Center, Ltd. v. Board of County Com'rs of Gooding County, 150 Idaho 484, 248 P.3d 735 (2011).

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79 Am. Jur. 2d Welfare § 108

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Welfare Laws
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VII. Determination and Enforcement of Rights

§ 108. Injunctive relief; mandamus

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 62, 126, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 40 (Petition or application—For writ of mandate—For declaratory and injunctive relief—Enjoining public agencies from implementing pilot project—Surprise visits at homes of applicants unconstitutional and waste of public funds)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 44 (Petition or application—Appeal from administrative finding—For declaratory and injunctive relief)

Injunctive relief is proper with regard to state statutes which are incompatible with the federal public assistance statutes although such relief will not be granted unless such invalidity is made to clearly appear.[1] Moreover, while injunctive relief can be granted against state officials, prohibiting the continued enforcement of state welfare statutes or regulations which are either unconstitutional or not in keeping with standards deriving from federal statutes, an unconstitutional state practice or plan cannot be continued by the State even if it were willing to forego federal financial help, but state welfare administration which is invalid only in the sense that it does not conform to federal standards may be continued, federal court injunction notwithstanding, if the State is willing to bear its entire cost.[2] A preliminary injunction ordering a state welfare department to perform some affirmative act, such as the conduct of hearings, is generally not granted where there is no clear showing that the state agency is not, in fact, performing such acts or in a position to do so.[3]

When a court finds that a state's welfare system is in some way incompatible with the requirements of the Federal Social Security Act, it may grant an injunction against further payment of federal funds to the state assistance program unless the State within a reasonable time develops a plan conforming to federal standards.[4]

Mandamus has been held to lie to order the director of a county department of public health and welfare not to deny general assistance support to a qualified applicant.[5]

Footnotes

1 Alvarado v. Schmidt, 317 F. Supp. 1027 (W.D. Wis. 1970).

2 Rothstein v. Wyman, 467 F.2d 226 (2d Cir. 1972).

3 Banner v. Smolenski, 315 F. Supp. 1076 (D. Mass. 1970).

4 Rosado v. Wyman, 397 U.S. 397, 90 S. Ct. 1207, 25 L. Ed. 2d 442, 13 Fed. R. Serv. 2d 375 (1970).

5 Mooney v. Pickett, 4 Cal. 3d 669, 94 Cal. Rptr. 279, 483 P.2d 1231 (1971).
If an applicant for general relief is as a matter of fact a "dependent person," the relief-conferring officials are under a statutory duty to provide relief, and mandamus is the proper remedy to compel them to perform their duty. State ex rel. Arteaga v. Silverman, 56 Wis. 2d 110, 201 N.W.2d 538 (1972).

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VII. Determination and Enforcement of Rights

§ 109. Awards of retroactive payments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3874(1) to 3874(3)
West's Key Number Digest, Public Assistance 62, 69, 126, 129, 160
West's Key Number Digest, Social Security and Public Welfare 175.30

A.L.R. Library

Violations and enforcement of Food Stamp Act of 1964 (7 U.S.C.A. secs. 2011 et seq.), 120 A.L.R. Fed. 331

With regard to the making of back payments subsequently determined to have been illegally withheld from a welfare recipient, the argument that such payments are for current subsistence, and that the award of back payments would constitute a gratuitous windfall, has not been well received by the courts,[1] which have made such awards.[2] Corrective payments must be made retroactive to the date when the state welfare administration incorrect action was taken.[3]

Although the Food Stamp Act and regulations promulgated pursuant thereto give no specific remedy for the wrongful or inadvertent failure or refusal to issue food stamps to eligible participants, some courts have, while refusing to order a retroactive adjustment, granted persons wrongfully denied such food stamps a "forward adjustment," under which their eligibility for food stamps would be extended for the number of months that they were wrongfully denied such stamps.[4]

The public interest considerations which cause the State to oppose retroactive payments of wrongfully withheld welfare benefits are to be given special weight, and a federal court should be very slow to command a result which the State believes not to be the best use of state funds in meeting the current needs of its citizens.[5] Moreover, a federal court does not have jurisdiction to grant such relief by reason of the constitutional prohibition under the 11th Amendment of suits against a state.[6]

The federal government, not the State, is liable for retroactive food stamp benefits that must be paid to welfare recipients who were denied participation in the program through a state administrative error.[7]

A recipient of public assistance benefits was entitled to retroactive payment of benefits for any period of time the recipient resided in a homeless shelter prior to the promulgation of a regulation providing for benefits to shelter residents as the wrongful termination of benefits contributed to the recipient's destitution and need to reside in the shelters.[8]

Footnotes

1 McDonald v. Department of Public Welfare of State of Fla., 430 F.2d 1268 (5th Cir. 1970).

2 McDonald v. Department of Public Welfare of State of Fla., 430 F.2d 1268 (5th Cir. 1970); Alvarado v. Schmidt, 317 F. Supp. 1027 (W.D. Wis. 1970).

3 Grubb v. Sterrett, 315 F. Supp. 990 (N.D. Ind. 1970), judgment aff'd, 400 U.S. 922, 91 S. Ct. 187, 27 L. Ed. 2d 182 (1970).

4 Russo v. Kirby, 335 F. Supp. 122 (E.D. N.Y. 1971).

5 Rothstein v. Wyman, 467 F.2d 226 (2d Cir. 1972).

6 Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974); Rothstein v. Wyman, 467 F.2d 226 (2d Cir. 1972).

7 Bermudez v. U.S. Dept. of Agr., 490 F.2d 718 (D.C. Cir. 1973).

8 Auguste v. Wing, 244 A.D.2d 252, 664 N.Y.S.2d 601 (1st Dep't 1997).

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79 Am. Jur. 2d Welfare § 110

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VII. Determination and Enforcement of Rights

§ 110. Class actions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Federal Civil Procedure 189
West's Key Number Digest, Parties 35.89

Forms

Am. Jur. Pleading and Practice Forms, Welfare Laws § 39 (Complaint, petition, or declaration—Class action—For declaratory and injunctive relief—Eligibility for AFDC assistance)
Am. Jur. Pleading and Practice Forms, Welfare Laws § 45 (Petition or application—Class action—For alternative writ of mandamus—To compel welfare department officials to grant aid—Failure to process applications within designated period)

Various classes of welfare applicants and recipients, and other persons aggrieved by the public welfare laws, have been certified and allowed to pursue their claims.[1] On the other hand, class certification has been found inappropriate under the particular facts of some cases.[2]

Proposed class definitions were not unworkable in a suit brought on behalf of welfare recipients with disabilities who resided in a city seeking to enjoin implementation of a city program under which their welfare-related services would be provided only through three "hub" centers, rather than through 29 neighborhood offices, as the defendant agency's own admitted criteria for the program designation encompassed the protected group sufficiently to eliminate the need for incorporation of the explicit statutory reference, and incorporation of the Americans with Disabilities Act's definition of disability in the definition of the subclass was both workable and appropriate.[3]

CUMULATIVE SUPPLEMENT

Cases:

Proposed class of developmentally disabled persons challenging state's decision to move them from uncapped Aged and Disabled Medicaid Waiver Program to capped Family Supports Medicaid Waiver Program was too vague in including persons who required more services each year than were available through the capped program and were not enrolled in another uncapped program, and, thus, denial of class certification was not abuse of discretion in suit claiming violation of ADA's integration mandate; definition did not say in what ways potential class members required more services. Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; 28 C.F.R. § 35.130(d); Fed.Rules Civ.Proc.Rule 23, 28 U.S.C.A. Steimel v. Wernert, 823 F.3d 902, 94 Fed. R. Serv. 3d 1277 (7th Cir. 2016).

Single, class-wide injunction would not redress injury alleged in class action by disabled individuals who received Medicaid-funded long-term care services against District of Columbia, alleging that they were unnecessarily segregated and isolated from their communities by being confined to nursing facilities, and had failed to receive transition services to community-based care, in violation of the ADA and Rehabilitation Act; there was a lack of available, affordable, and accessible housing in District, waiting list for public and subsidized housing in District was closed and had over 40,000 names on it, District provided vouchers to subsidize housing through a lottery, District provided assistance in finding landlords who accepted vouchers, successful transition could be prevented by individual issues, such as need for wheelchair access or poor credit history, and individuals could not be discharged from nursing facilities until needed services were in place, which could delay transitions. Social Security Act § 304, 42 U.S.C.A. § 504; Americans with Disabilities Act of 1990 § 201, 42 U.S.C.A. § 12131 et seq. Brown v. District of Columbia, 322 F.R.D. 51 (D.D.C. 2017).

Typicality prerequisite for class certification was satisfied in action against Director of Michigan Department of Human Services (DHS) in her official capacity challenging Michigan's law and policy governing disqualification of "fugitive felons" from various forms of public assistance, including federal food assistance; named plaintiffs' claims, like those of class, arose from the same conduct and were based on the same legal theory as class and subclass claims. Fed.Rules Civ.Proc.Rule 23(a)(3), 28 U.S.C.A.; M.C.L.A. § 400.10b. Barry v. Corrigan, 79 F. Supp. 3d 712, 90 Fed. R. Serv. 3d 907 (E.D. Mich. 2015).

Adequacy requirement for class certification was satisfied in class action brought by Wisconsin Medicaid-enrolled transgender individuals suffering from gender dysphoria challenging provision of state Medicaid regulation excluding coverage for gender-confirming surgeries to treat gender dysphoria as violative of their federal statutory and constitutional rights; named plaintiffs were sufficiently interested in the case's outcome and were not subject to conflict of interest, as they all suffered same injuries as the class and would rigorously advocate for the class, and plaintiffs' counsel had experience in class action and complex civil rights litigation, as well as litigating transgender rights. U.S. Const. Amend. 14; 42 U.S.C.A. § 18116(a); Fed. R. Civ. P. 23(a)(4); Wis.Admin. Code § DHS 107.03(23, 24). Flack v. Wisconsin Department of Health Services, 331 F.R.D. 361 (W.D. Wis. 2019).

[END OF SUPPLEMENT]

Footnotes

1 Robidoux v. Celani, 987 F.2d 931, 25 Fed. R. Serv. 3d 86 (2d Cir. 1993); Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 30 Fed. R. Serv. 3d 1469 (3d Cir. 1994); Miles v. Metropolitan Dade County, 916 F.2d 1528, 18 Fed. R. Serv. 3d 134 (11th Cir. 1990); Edmonds v. Levine, 233 F.R.D. 638 (S.D. Fla. 2006).
Certification of a class of children who were the legal responsibility of a city's child welfare system was appropriate under the rule permitting class certification where a defendant has acted or refused to act on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate,

where the plaintiffs alleged that the deficiencies of child welfare system stemmed from central and systemic failures. Marisol A. v. Giuliani, 126 F.3d 372, 38 Fed. R. Serv. 3d 1454 (2d Cir. 1997).

A class of resident aliens who were receiving Food Stamps and brought an action alleging that the Immigration and Naturalization Service (INS) processing delays made them unable to become citizens before the newly enacted Food Stamp citizenship eligibility requirement was implemented was properly limited to the Seventh Circuit, rather than certified as a nationwide class, as all the named plaintiffs resided in the Seventh Circuit, the INS processing delays varied across different geographic regions, and the plaintiffs relied on Seventh Circuit case law. Shvartsman v. Apfel, 138 F.3d 1196, 40 Fed. R. Serv. 3d 6 (7th Cir. 1998).

As to class actions, generally, see Am. Jur. 2d, Parties §§ 45 et seq.

2 Davis v. Smith, 607 F.2d 535, 25 Fed. R. Serv. 2d 1428, 28 Fed. R. Serv. 2d 1335 (2d Cir. 1978); Robinson v. Block, 869 F.2d 202 (3d Cir. 1989).

3 Lovely H. v. Eggleston, 235 F.R.D. 248 (S.D. N.Y. 2006).

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79 Am. Jur. 2d Welfare VIII Refs.

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VIII. Criminal Liability

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Public Assistance 73, 133, 162, 219
West's Key Number Digest, Social Security and Public Welfare 18

A.L.R. Library

A.L.R. Index, Poor Persons
West's A.L.R. Digest, Public Assistance 73, 133, 162, 219
West's A.L.R. Digest, Social Security and Public Welfare 18

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79 Am. Jur. 2d Welfare § 111

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VIII. Criminal Liability

§ 111. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 73, 133, 162, 219
West's Key Number Digest, Social Security and Public Welfare 18

A.L.R. Library

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 A.L.R.5th 390
Criminal liability under state laws in connection with application for, or receipt of, public welfare payments, 22 A.L.R.4th 534
Criminal liability for wrongfully obtaining unemployment benefits, 80 A.L.R.3d 1280

The obtaining of public relief or welfare payments by means of fraudulent representation has been prosecuted under penal laws relating to the crime of grand larceny,[1] petit larceny[2] theft by deception,[3] and theft by false pretenses.[4]

The wrongful obtaining or receiving of public relief or welfare payments has been prosecuted under a number of other general criminal statutes, including prosecution for forgery of an order for payment of public relief or welfare benefits,[5] perjury,[6] conspiracy,[7] offering a false instrument for filing with intent to defraud,[8] and the presenting of a false claim to public authorities.[9]

Observation:

It is held both that the particular criminal provisions of the public relief or welfare statute preclude prosecution under other general criminal statutes[10] and that the State could prosecute the alleged violator under either the general or the particular criminal provisions, or both.[11]

A welfare recipient who has been exonerated of fraud charges by a state department of social services in an administrative hearing cannot be criminally prosecuted for welfare fraud, inasmuch as the doctrine of collateral estoppel bars the prosecution from relitigating issues that were determined in an administrative hearing.[12]

Observation:

It has been said that although criminal sanctions are relied upon, the primary purpose of public welfare statutes is regulation rather than punishment or correction, and the offenses are not crimes in the orthodox sense, and wrongful intent is not required in the interest of enforcement.[13]

The five-year limitations period for charging a defendant with knowingly providing false and misleading information to obtain food stamp benefits began to run when a defendant allegedly provided false information to the county social services department to procure food stamps.[14]

CUMULATIVE SUPPLEMENT

Cases:

Evidence established that defendant, as executive assistant for her husband's home health care business, participated in scheme to overbill state's Medicaid program for personal care services, in prosecution for health care fraud; an employee testified that defendant knew about business's practice of billing by the plan of care rather than by the actual hours worked, and that defendant advised the employee "that is what [defendant's husband] wants to do, so that's what we do," and defendant actively directed employees to falsify aide records when state Medicaid program's audit was imminent. 18 U.S.C.A. § 1347. United States v. Perry, 659 Fed. Appx. 146 (4th Cir. 2016), cert. denied, 2017 WL 160528 (U.S. 2017).

Testimony of Medicare recipients that they received home healthcare services and that such healthcare was medically necessary was properly excluded as not relevant, in prosecution for participating in Medicare kickback scheme; crime at issue made no distinction between kickbacks paid for medically necessary services and those paid for unnecessary ones. Social Security Act § 1128B, 42 U.S.C.A. § 1320a-7b(b)(1)(A); Fed. R. Evid. 401, 402. United States v. Eggleston, 823 Fed. Appx. 340 (6th Cir. 2020).

Defendants' convictions for making false statements to Medicare were supported by sufficient evidence, including evidence that defendants signed or directed employees of their non-emergency ambulance company to sign run tickets stating that Medicare beneficiaries, who were transported by the company, were on stretchers when they were not. 18 U.S.C.A. §§ 371, 1035. U.S. v. Medlock, 792 F.3d 700 (6th Cir. 2015).

Daycare provider's employee's intent in submitting erroneous bills to county for payment of benefits under Child Care Assistance Program (CCAP) was not relevant to whether provider's sole owner acted with intent for daycare to receive CCAP benefits to which it was not legally entitled, as ground for owner's disqualification from any direct contact with children from low-income families receiving services, by either failing to correct employee's errors or herself submitting billing reports to county representing that children were present when in fact they were absent or were no longer enrolled in daycare. Minn. Stat. Ann. § 256.98(1)(3). Kind Heart Daycare, Inc. v. Commissioner of Human Services, 905 N.W.2d 1 (Minn. 2017).

[END OF SUPPLEMENT]

Footnotes

1 People v. McDonald, 88 N.Y.2d 281, 644 N.Y.S.2d 670, 667 N.E.2d 320 (1996).

2 People v. Montroy, 225 A.D.2d 913, 639 N.Y.S.2d 522 (3d Dep't 1996).

3 People v. Nix, 42 P.3d 41 (Colo. App. 2001) (conviction overturned because defendant met residency requirements); State v. Mays, 108 Ohio App. 3d 598, 671 N.E.2d 553 (8th Dist. Cuyahoga County 1996).

4 People v. Rubin, 286 A.D.2d 555, 729 N.Y.S.2d 561 (3d Dep't 2001).

5 People v. Ciralsky, 360 Ill. 554, 196 N.E. 733 (1935); Jones v. State, 69 Okla. Crim. 244, 101 P.2d 860 (1940).

6 People v. Isaac, 56 Cal. App. 3d 679, 128 Cal. Rptr. 872 (1st Dist. 1976) (disapproved of on other grounds by, People v. Jenkins, 28 Cal. 3d 494, 170 Cal. Rptr. 1, 620 P.2d 587 (1980)); Harris v. State, 27 Md. App. 547, 342 A.2d 305 (1975).

7 State v. Butler, 269 N.C. 733, 153 S.E.2d 477 (1967); Com. v. Volk, 298 Pa. Super. 294, 444 A.2d 1182 (1982).

8 People v. McDonald, 88 N.Y.2d 281, 644 N.Y.S.2d 670, 667 N.E.2d 320 (1996).

9 Smith v. Superior Court, 5 Cal. App. 3d 260, 85 Cal. Rptr. 208 (5th Dist. 1970); State v. Moore, 238 Or. 117, 393 P.2d 180 (1964).

10 State v. Becker, 39 Wash. 2d 94, 234 P.2d 897 (1951).

11 People v. Ryerson, 199 Cal. App. 2d 646, 19 Cal. Rptr. 22 (3d Dist. 1962); State v. Drake, 79 N.J. Super. 458, 191 A.2d 802 (App. Div. 1963).
As to prosecutions under welfare statutes, see § 112.

12 People v. Garcia, 39 Cal. 4th 1070, 48 Cal. Rptr. 3d 75, 141 P.3d 197 (2006).

13 People v. King, 38 Cal. 4th 617, 42 Cal. Rptr. 3d 743, 133 P.3d 636 (2006).

14 U.S. v. Lowry, 409 F. Supp. 2d 732 (W.D. Va. 2006).

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79 Am. Jur. 2d Welfare § 112

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VIII. Criminal Liability

§ 112. Prosecution under special criminal statutes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Public Assistance 73, 133, 162, 219
West's Key Number Digest, Social Security and Public Welfare 18

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Criminal liability under state laws in connection with application for, or receipt of, public welfare payments, 22 A.L.R.4th 534
Federal Criminal Prosecution Against Medical Practitioner for Fraud in Connection with Claims Under Medicaid, Medicare, or Similar Welfare Program Providing Medical Services, 66 A.L.R. Fed. 2d 1
Violations and enforcement of Food Stamp Act of 1964 (7 U.S.C.A. secs. 2011 et seq.), 120 A.L.R. Fed. 331

Public relief and welfare statutes sometimes contain provisions imposing criminal penalties on one who applies for or obtains payments thereunder by means of fraudulent representations.[1] Under a statute prohibiting the obtaining of welfare payments by means of any false statement, willful misrepresentation, or failure to notify the county department of a change in status, the requirement of a "willful" representation is satisfied by knowingly or intentionally committing the proscribed acts.[2] A state statute making criminal the obtaining of public assistance by means of a false statement or representation, or by deliberate concealment of any material fact, or by impersonation or other fraudulent device, will not support conviction of one who has merely refused to accept employment, no fraud being shown or charged.[3] Under some statutes, on the issue of whether obtaining welfare benefits by false representations for a number of consecutive months constitutes a single felony or only a series of misdemeanors, fraudulently obtaining such benefits is a felony when the benefits are illegally obtained pursuant to one general scheme.[4]

Caution:

A demand for restitution prior to the commencement of criminal proceedings for welfare fraud is not be required.[5]

Some states provide criminal penalties for fraudulent conduct in the application or receipt of benefits under a state Medicaid program,[6] or under a state medical assistance program.[7] In at least one state Medicaid fraud is a specific intent crime.[8] Although the doctrine of collateral estoppel may in some instances bar a prosecution, where the application of the doctrine would work injustice, public policy does not allow its application to bar a prosecution for welfare fraud following an administrative hearing on whether the criminal defendant received overpayments of public assistance as requiring the prosecution to marshal its potential witnesses and evidence at the administrative level could cause the State to forego administrative hearings even though such a hearing is allowed to recoup financial losses.[9]

A retail food store may lawfully transfer food stamp coupons which it has redeemed only to a wholesale food concern or a commercial bank, and any transfer of coupons made in any other manner, including the sale of such coupons at a discount, is a criminal violation of the Food Stamp Act.[10]

CUMULATIVE SUPPLEMENT

Cases:

A conviction for the knowing use, transfer, acquisition, alteration, or possession of benefits in a manner contrary to the statutes and regulations of the Supplemental Nutrition Assistance Program (SNAP) requires proof that a defendant: (1) used, transferred, acquired, altered, or possessed benefits contrary to SNAP statutes or regulations, and (2) knew that his conduct was contrary to the statutes or regulations. Food Stamp Act of 1977, § 15(b)(1), 7 U.S.C.A. § 2024(b)(1). Mowlana v. Lynch, 803 F.3d 923 (8th Cir. 2015).

Phrase "results in" imports "but for" causation, as that phrase is used in statute providing that any responsible person who abuses or neglects an incapacitated adult and the abuse or neglect results in the death of the incapacitated adult is guilty of a Class 3 felony; in other words, the Commonwealth must prove that the abuse or neglect was a proximate cause of the death. West's V.C.A. § 18.2–369(B). Wagoner v. Com., 770 S.E.2d 479 (Va. 2015).

[END OF SUPPLEMENT]

Footnotes

1 People v. Preston, 43 Cal. App. 4th 450, 50 Cal. Rptr. 2d 778 (4th Dist. 1996), as modified, (Mar. 27, 1996); Balls v. State, 725 N.E.2d 450 (Ind. Ct. App. 2000); County of Morrison v. Litke, 558 N.W.2d 16 (Minn. Ct. App. 1997).
As to criminal penalties for acts involving federal health care programs under federal criminal statute, see § 51.

2 People v. Williams, 79 Ill. App. 2d 56, 222 N.E.2d 915 (2d Dist. 1967).

3 People v. Pickett, 19 N.Y.2d 170, 278 N.Y.S.2d 802, 225 N.E.2d 509 (1967).

4 People v. Camillo, 198 Cal. App. 3d 981, 244 Cal. Rptr. 286 (3d Dist. 1988).

5 People v. Preston, 43 Cal. App. 4th 450, 50 Cal. Rptr. 2d 778 (4th Dist. 1996), as modified, (Mar. 27, 1996).

6 State v. Rollins, 749 So. 2d 890 (La. Ct. App. 2d Cir. 1999), writ denied, 768 So. 2d 1278 (La. 2000); People v. Motor City Hosp. and Surgical Supply, Inc., 227 Mich. App. 209, 575 N.W.2d 95 (1997); State v. Urban, 2002-Ohio-1438, 2002 WL 464980 (Ohio Ct. App. 10th Dist. Franklin County 2002).
As to criminal penalties for acts involving federal health care programs under federal criminal statute, see § 51.

7 State v. Rollins, 749 So. 2d 890 (La. Ct. App. 2d Cir. 1999), writ denied, 768 So. 2d 1278 (La. 2000); State v. Urban, 2002-Ohio-1438, 2002 WL 464980 (Ohio Ct. App. 10th Dist. Franklin County 2002).

8 State v. Rollins, 749 So. 2d 890 (La. Ct. App. 2d Cir. 1999), writ denied, 768 So. 2d 1278 (La. 2000).

9 State v. Williams, 132 Wash. 2d 248, 937 P.2d 1052 (1997).

10 U.S. v. Wilson, 438 F.2d 479, 13 A.L.R. Fed. 364 (7th Cir. 1971).
As to provisions of the Food Stamp Act, generally, see § 27.

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